

(2013) 04 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 117 of 2011

Sh. C. Lawmzuala

APPELLANT

Vs

Mizoram University and Another

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2013) LabIC 2586

Hon'ble Judges : Tinlianthang Vaiphei, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra, T.J. Lalnuntluanga, K. Laldinliana, Zoram-Chhana, Ms. Venus H. Zomuankimi and Ms. Lalramsangzuali, for the Appellant; Zothan-Khuma, for the Respondent

Judgement

Tinlianthang Vaiphei, J.—Both Mr. C. Lalramzauva, learned Sr. counsel assisted by Mr. T.J. Lalnuntluanga, learned counsel for the petitioner and Mr. M. Zothankhuma, learned Sr. counsel assisted by Mr. R. Ralte, learned counsel for the respondent University are heard at length. The petitioner in this writ petition is aggrieved by the refusal of the respondents to promote him to the post of Assistant Librarian in accordance with the recommendations made by the Departmental Promotion Committee purportedly under the Mizoram University Recruitment Rules, 2010. The material facts are not in dispute. The petitioner was initially appointed as Semi Professional Assistant in the North Eastern Hill University and was subsequently promoted to the post of Professional Assistant. In the meantime, following the establishment of the Mizoram University under the Mizoram University Act, 2010, he along with other employees came to be absorbed in the service of the Mizoram University. According to him, the post of Assistant Librarian was created by the University, 50% of these posts are to be filled up by way of promotion and the remaining 50% up by way of direct recruitment. There is no dispute about the eligibility of the petitioner for the post of Assistant Librarian. In the year 2011, a DPC was duly constituted for filling up the post of Assistant Librarian. The petitioner took part in the promotion process and was recommended by the DPC for promotion to this post. However, much to

his consternation, the respondent authorities refused to issue formal promotion order. This is how this writ petition has been filed for appropriate relief.

2. The contention of the learned Sr. counsel for the petitioner is that the petitioner having been qualified for the post of Assistant Librarian was duly recommended by the DPC in accordance with the provisions of the Mizoram University Recruitment Rules, 2010, and as such the refusal of the respondent authorities to act upon the recommendation of the DPC is contrary to the law and is arbitrary.

3. Opposing the contention of the learned Sr. counsel for the petitioner, the learned Sr. counsel for the University draws my attention to the Mizoram University Rules, 2007 wherein it is clearly stated that this Rules are to come into force on the date of its official notification, but, till now, these Rules have not been officially notified and as such the DPC so constituted as well as the recommendation by the DPC in accordance with this yet to be born Rules is void ab initio and cannot be given effect to.

4. A number of arguments and counter arguments have been advanced by both the learned Counsel appearing for the rival parties, but suffice it to say that the core issue involved in this writ petition lies in a narrow compass. The sole point for determination is whether the Mizoram University Rules, 2010, had come into force or not when the promotion process of the petitioner was made. In order to convince me that these Rules have in fact been officially notified and have, therefore, come into force, the learned Sr. counsel for the petitioner takes me to the rejoinder affidavit filed by the petitioner and draws my attention to annexures A-1, A-2 and other annexures to indicate that the appointments to the post indicated therein were made in accordance with the Mizoram University Rules, 2010 which go to show that the Rules have indeed come into force or are deemed to have come into force as otherwise these appointments could have been made had these rules been not in force.

5. I have carefully peruse these annexures and am unable to persuade myself that these documents have demonstrated the appointment of the appointees in accordance with the Rules 2010. Nothing is indicated therein to show that these appointments were made in accordance with the Mizoram University Rules, 2010. Moreover, no recruitment rules be enforced by implication: these Rules shall have to be duly notified in the official Gazette. On the contrary, Mr. Zothankhuma draws my attention to the letter dated 31/12/2008 addressed to the Secretary, University Grants Commission by the Ministry of Human Resources Development Department of Higher Education to show that filling up of such posts as the Assistant Registrar etc. were made purely on the basis of the existing pattern and not in terms of the Rules, 2010. Insofar as the appointment of the Assistant Registrar is concerned, the learned Sr. counsel for the University argues that the case of the petitioner is clearly distinguishable inasmuch as her promotion is governed by the letter at annexure 5 and not by the Mizoram University Service Rules, 2010. He points out that when her appointment was made without

following the UGC Rules for constitution of the DPC, rectification exercise was undertaken as per the statute and as such the plea of hostile discrimination made by the petitioner does not hold water.

6. After considering the submissions of the rival parties, I am of the considered view that the petitioner is not able to make out any case of hostile discrimination. He was recommended by the DPC which was constituted contrary to law and is, therefore, unsustainable in law. The refusal of the University to act upon the recommendation of the DPC cannot, therefore, be said to be illegal or arbitrary or discriminatory. It is a settled proposition of law that a selectee has no indefeasible right of appointment, and his selection is liable to be annulled if the same is done contrary to law. This is exactly what happened in this case. Consequently, this writ petition has no merit and is accordingly, dismissed, but by directing the parties to bear their respective costs. Before parting, I am, however, constrained to observe that the petitioner has been given a raw deal by the respondent authorities. Entitlement, he may not have but he deserved to be treated fairly. It is hoped that as and when the Mizoram University Recruitment Rules, 2010 is officially notified, his case for promotion is duly considered, more so, when he is otherwise found fit for the promotion, who could have been given the promotion but for the non-enforcement of the Mizoram University Recruitment Rules, 2010 or the absence of corresponding provision for the post of Assistant Librarian in the letter dated 31-12-2008 issued by the Ministry of Human Resource Development, Department of Higher Education.