
(2016) 11 GAU CK 0078
In the Gauhati High Court
Case No : W.P(C)No. 103 of 2015

Sh. P.C. Lalthlamuana

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GauLT 496

Hon'ble Judges : S. Serto, J.

Bench : Single Bench

Advocate : Mrs. Dinari T. Azyu, Mr. Victor L. Ralte, Ms. Vanhmingliani and Mr. K. Roland Advocates, for the Petitioners; Mrs. Linda L. Fambawl, Govt. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S. Serto, J. (Oral)—This is a Writ petition filed by 45 primary teachers, working in the department of Education, Govt, of Mizoram praying for issuance of Writ of Mandamus or any appropriate Writ or direction or order to the respondents to issue appropriate or necessary order so that they can enjoy the pension scheme as per the CCS (Pension) Rules, 1972.

2. Heard Mrs. Dinari T. Azyu, learned counsel appearing for the petitioners as well as Mrs. Linda L. Fambawl, learned Govt. Advocate appearing for the State respondents.

3. It is submitted by the learned counsel for the petitioners that the petitioners were initially appointed between the year 1980 to 2002 as casual primary teachers and their services were utilized by the department at various schools in the State. After they have rendered valuable service to the department, the Council of Ministers in its meeting held on 25.09.2008 decided to engage the petitioners as contract employees. In pursuance of the decision of the Council of Ministers, the Notification dated 05.09.2008 being No. G. 12017/3/2007-

FIN(PRU) was issued by the Addl. Secretary to the Government of Mizoram, Finance Department appointing the petitioners to the post of Aided teachers and Non-formal teacher on contract basis on fixed honorarium as enhanced therein. Thereafter, the scheme namely, "Government of Mizoram Regularization of Contract Employees Scheme, 2008" was framed and notified by the Govt. of Mizoram under which services of those contract employees who have worked for 5 (five) years continuously can be regularized. Following the notification of the scheme, a DPC was duly constituted for considering suitability of the petitioners for regularization to their service. The DPC in their sitting held on 25.11.2011 examined the eligibility and suitability of the petitioners for regularization to their respective post and found the petitioners eligible and suitable for regularization and were accordingly, recommended for their regularization.

4. Following the recommendation of the DPC, the Directorate of School Education, Govt, of Mizoram vide its Order No. B. 14013/7/2010-DTE(EDS) dated 28.02.12 regularized the service of the petitioners to their respective post. However, 5 (live) among the petitioners were not included in the said Order. But subsequently, vide Order No. A. 32015/1/2012-DTE(EDS) dated 22.10.14, the service of those persons who were not included in the earlier order were also regularized.

The grievance of the petitioners is that though they are entitled to enjoy the pensionary benefits under CCS (Pension) Rules, 1972 in terms of Clause 7 of the Government of Mizoram Regularization of Contract Employees Scheme, 2008, which is given here below have not been given the same instead they have been brought in under the new pension scheme of the state namely," the Mizoram New Defined Contributory Pension Scheme, 2010" and they have been allotted permanent pension account numbers :

Clause 7."On regularization, past service rendered as continuous Contract employee shall be counted as qualifying service for leave and pensionary benefits only."

5. The learned counsel of the petitioners further submitted that under para 2.1 (e) & (f) of the said scheme that is "the Mizoram New Defined Contributory Pension Scheme, 2010" the petitioners are clearly excluded from that scheme. Therefore, they have all the more reasons to be given the pensionary benefits under the CCS (Pension) Rules 1972. The relevant para of the scheme as submitted is given herein below :

"Tier-I of the scheme shall apply only to the Government servants appointed on regular basis with effect from 1.9.2010 onwards to civil services and posts in connection with the affairs of the State which are borne on pensionable establishments, but shall not apply to :-

(e) Persons employed on contract basis.

(f) Persons whose terms and conditions of service are regulated by or under the

provisions of the Constitution or any other law or specific scheme for the time being in force."

6. After pointing out the word scheme in clause (f) of the above stated scheme the learned counsel for the petitioners submits that the petitioners were regularized under a specific scheme i.e. "The Government of Mizoram Regularization of Contract Employees Scheme, 2010" therefore, they are not covered by the new scheme at all. The learned counsel also submits that there was no other pension scheme that prevailed in Mizoram which was made applicable to the employees of the Govt, of Mizoram except the pension scheme under CCS (Pension) Rules, 1972 before the new scheme was introduced. Necessarily therefore, the petitioners could have only been given pensionary" benefits under the said scheme/rules and not under the new scheme. The learned counsel also submits that this case is covered by the Judgment & Order dated 1.05.2015 passed by this Court in W.P(C) No. 93 of 2014. This Court had considered the case of 210 primary teachers whose service were also regularized by the Mizoram government vide Order No. A. 40014/1/2010-DTE(EDS)/IV dated 13.05.2014 issued by the Director of School Education, Govt, of Mizoram in pursuance of the Cabinet decision taken on 25th to 27th August, 2008. After considering all the facts and circumstances of the case and relevant clauses of rules & regulations, the Court directed that the petitioners in W.P(C) No. 93 of 2014 be given pensionary benefits under the provision of the CCS (Pension) Rules, 1972.

7. The learned Govt. Advocate Mrs. Linda L. Fambawl appearing for the State respondents submits that the petitioners in this case were not regularized under any scheme but on humanitarian ground considering the service rendered by them in the past. Therefore, they cannot be given the benefit of the said scheme. The learned Govt. Advocate also submits that the case of the petitioners in W.P(C) No. 93/2014 and the case of the present petitioners is different inasmuch as the appointment of the petitioners in W.P(C) No. 93/2014 were made in conformity with the Office Memorandums and notifications issued from time to time by the State government whereas the petitioners in this case were appointed under no such rules.

I am unable to agree with the submission of the Ld. Counsel since, the service of the petitioners in W.P(C) No. 93/2014 and the service of the petitioners in this case were regularized under the same decision of the Cabinet and under the same scheme. I see no difference between the petitioners in W.P(C) No. 93/2014 and the present petitioner herein from the time they were engaged as contract basis. There fore, I am of the opinion that the case of the petitioners is covered by Judgment & Order dated 1.05.2015 passed by this Court in W.P(C) No. 93 of 2014 which according to the petitioner"s counsel has been implemented also. Further, I agree with the submission of the learned counsel for the petitioners that the petitioners were regularized under the scheme "Government of Mizoram Regularization of Contract Employees Scheme, 2008" because the Government

would not have regularized anybody's service without a scheme or under a scheme. The only scheme framed by the Government of Mizoram for regularization of service of its contract employees being that scheme only there is no doubt that the services of the petitioners were regularized under it. Therefore, they are entitled to enjoy the scheme of pension as envisaged in the scheme under which their services were regularized.

I also agree with the submission of the learned counsel for the petitioner that since CCS (Pension) Rules, 1972 was the only pension scheme made available to the employees of the Government of Mizoram at that relevant time, the petitioners could have only been given pensionary benefits under the same Rule.

8. In view of the reasons stated above, the Writ petition is allowed and the respondents are directed to take necessary steps for granting pensionary benefits to the petitioners within a period of 3 (three) months from the date of receipt of a copy of this Order.

9. Further, the respondents are directed to take steps to allot GPF account number to the petitioners and thereafter transfer the amounts already deposited by them as pensionary contributions to those accounts.

With the above directions, this Writ petition stands disposed of.