

(2010) 02 GAU CK 0083
In the Gauhati High Court
Case No : Writ Petition (C) No. 100 of 2008

Sh. Vanlalringa and Others

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Citation : (2010) 2 GLD 271 : (2011) 2 GLT 377

Hon'ble Judges : A.C. Upadhyay, J

Bench : Single Bench

Advocate : C. Lalramzauva, for the Appellant; N. Sailo, Addl. A.G., for respondent Nos. 1 to 4 and H. Lalmuankima, for the Respondent

Final Decision : Allowed

Judgement

A.C. Upadhyay, J.—I have heard C. Lalramzauva, learned Counsel for the petitioner, Mr. N. Sailo, Additional Advocate General, Mizoram and Mr. R.C. Thanga, learned Counsel appearing on behalf of respondent No. 5.

2. The writ petitioners, in all 14 of them, were appointed as "Instructors" at ITI Aizawl in terms of the relevant recruitment rules, after having successfully completed the course of training conducted by the advanced Training Institution/ Central Training Institute, under the Ministry of Labour, Directorate General of Employment and Training.

3. After having been so appointed in their respective posts, petitioners served for more than 20 years, in the same capacity to the full satisfaction of their controlling authorities. The service condition of the petitioners are governed by the "Mizoram Labour and Employment Department (Group "C" Post) Recruitment Rules, 1987", which provides for the following criteria in the recruitment rules, for the purpose of promotion to the post of Vice Principal/Supervisor in different ITI's:

(i) all the posts of Vice Principal/Supervisor in the ITI, are required to be filled up

by promotion from;

(a) Instructor-I in Engineering Trade with not less than 2 years regular service in the grade;

(b) Instructor-II in Engineering Trade with not less than 5 years regular service in the grade.

4. In the year 2002, the Government of Mizoram approved the proposal for modernization of the existing ITI's at Aizawl and decided also to establish new ITI at Saiha and Lunglei in order to implement the Prime Minister's Economic Package for the North East States. In the process of implementation of the aforesaid decision, 1 (one) post of Group Instructor and 2 (two) posts of Vice-Principals at Saiha and Lunglei, and a number of other posts of Instructors adding together about 40 posts were allowed to be filled up on contract basis. Accordingly options were invited from willing Supervisors/Group Instructors of ITI, Aizawl, on consolidated pay. The petitioners, were working as regular Government employees in ITI, Aizawl by drawing salaries on regular basis at rates much higher than the fixed/consolidated pay offered against the post of Vice-Principal, ITI, Saiha and Lunglei and Group Instructor at Aizawl. In view of the above, the petitioners did not opt for such temporary and contractual engagement offered by the respondent. Consequently, the aforesaid posts were filled up on contract basis including the post of Group Instructor, ITI Aizawl, and Vice-Principal, ITI Saiha and the Vice-Principal, ITI Lunglei.

5. The Mizoram ITI Staff Association, in the meantime, submitted a representation to the respondent No. 4 demanding the filling up of the said posts of Vice-Principals of ITI at Saiha and Lunglei and Group Instructor, ITI Aizawl, on regular basis as per the existing rules.

6. It is admitted at the Bar that so far the aforesaid 3 posts are yet to be filled up and no process has been initiated. However, the petitioners by placing reliance on certain documents alleged that the State respondents have been planning to absorb the respondent No. 5 in the post of Vice-Principal, ITI Saiha, by flouting the rules of recruitment and also by ignoring the disapproval expressed by the Secretary to the Government of Mizoram, DP and R, Aizawl (respondent No. 3). Nevertheless during the course of arguments learned Counsel for the petitioners submitted that the petitioners have scaled down their prayers in the writ petition by only praying for a direction selection to the promotional post of Vice-Principal, Saiha and Lunglei and in the post of Group Instructor, at Aizawl in terms of the existing relevant recruitment rules applicable to the petitioners. The only grievance of the petitioner at present is appropriate consideration of the petitioner's standing for the aforesaid posts in terms of the recruitment rules, at the time of promotion to the aforesaid promotional posts.

7. Learned Counsel for the petitioners submitted that the writ petitioners were appointed in service as Instructors in terms of the recruitment rules governing the writ petitioners i.e. the Mizoram Labour and Employment Department (Group

"C Post) Recruitment Rules, 1987". However, the respondent No. 5 who has been engaged in the service on contract basis as the Vice-Principal of ITI Saiha cannot be treated to be a regularly appointed Vice-Principal, since the post held by him was temporary at the time of appointment. Therefore, any proposal for absorption of respondent No. 5 to the post of Vice-Principal, ITI Saiha on permanent basis, in a permanent vacancy created later on will be highly arbitrary, unreasonable and illegal as it will affect the promotional avenues of the petitioners and also shall be violative of rules relating to promotion to the post of Vice- Principal.

8. There is no dispute regarding the petitioners having a common cadre of service for all such employees recruited in terms of the provision of the Mizoram Labour and Employment Department (Group "C Post) Recruitment Rules, 1987. Therefore, after creation of a regular permanent posts of Vice-Principal at Saiha and Lunglei and Group Instructor at Aizawl, obviously these posts being promotional posts in terms of the Recruitment Rules and the petitioner's being in the feeder cadre are required to be considered for promotional posts in terms of the provisions of "the Mizoram Labour and Employment Department (Group "C" Post) Recruitment Rules, 1987". In support of his contention, learned Counsel for the petitioner relied on the decision of the Hon"ble Supreme Court reported in Principal, Mehar Chand Polytechnic, Jalandhar City and Another Vs. Anu Lumba and Others, wherein the Hon"ble Supreme Court held that:

16. Public employment is a facet of right to equality envisaged under Article 16 of Constitution of India. The State although is a model employer, its right to create posts and recruit people therefore emanates from the statutes or statutory rules and/or rules framed under the proviso appended to Article 309 of the Constitution of India. The Recruitment Rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.

9. Learned Counsel for the petitioner further emphasized on the fact that by dint of their regular employment in the cadre of Instructors in service they are eligible for being considered in any promotional posts available in terms of the provision of the Recruitment Rules. In support of his contention, learned Counsel for the petitioner relied on a decision of Hon"ble Supreme Court reported in R.S. Ajara and Others Vs. State of Gujarat and Others, wherein the Hon"ble Supreme Court held as follows:

16. ...A benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy and right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights. (See, State of Gujarat v. S. Raman Lal Keshav Lal Soni, K.C. Arora (Ex. Capt.) v. State of Haryana; T.R. Kapur v. State of Haryana; Uday Pratap Singh v. State of Bihar).

10. Learned Counsel for the petitioner further submitted that in an attempt to deprive the accrued rights of the petitioners in respect of the existing vacancy, no amendment to the recruitment rules can be given retrospective effect, since the vacancies arose well before the introduction of the amendment clause. In support of his contention, the learned Counsel relied on the decision reported in *A. Manoharan and Others Vs. Union of India (UOI) and Others*, wherein the Hon'ble Supreme Court following the law laid by it in *State of Rajasthan Vs. R. Dayal and Others*, held as follows:

25. Furthermore, the Regulations have been amended only which effect from 11.8.2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing prior thereto. *State of Rajasthan Vs. R. Dayal and Others*,

11. Mr. R.C. Thanga, learned Counsel appearing on behalf of the respondent No. 5 submitted that the respondent No. 5 came to hold the post of Vice-Principal at Saiha on contract basis when all other regular employees refused to take over and join the service. Therefore, learned Counsel for respondent No. 5 submits that a right has accrued to him for the purpose of regularization. However, such a claim of right of regularization projected on behalf of the respondent No. 5 dehors the principle laid by the Hon'ble Supreme Court in *Secretary, State of Karnataka and Ors. v. Umadevi and Ors.* (2006) 4 SCC 3, wherein the Hon'ble Supreme Court has emphasized that employees of the Government engaged on temporary, casual, ad-hoc or contractual basis have no right to claim for their regularization, absorption or continuation in such posts on permanent basis and the regular posts of recruitment or appointment has to be resorted to when regular vacancies in posts, at the particular point of time, are to be filled up. Such filling up of vacancies cannot be carried out haphazardly basing on patronage or other considerations. Regular appointment of the employee in terms of the rules framed under the authority or law governing the employment has to be followed. Hon'ble Supreme Court further emphasized on the fact that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is precisely because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right to equality conferred on civil servants under the constitutional scheme. Therefore, the Hon'ble Supreme Court held that when statutory rules are framed under Article 309 of the Constitution of India which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed" [See *Umadevi* (supra)].

12. Mr. N. Sailo, Additional Advocate General, Mizoram, opening his arguments on the issue submitted that there is absolutely no doubt of the fact the Government on its part cannot deviate from the existing rules of recruitment and promotion framed by it as and when such regular process of appointment or promotion to the post of Vice-Principal at Saiha and Lunglei and Group

Instructors at Aizawl are taken up. Further submitted that such selection/appointment of would be carried out in terms of the provision of the recruitment rules.

13. In view of what has been discussed above and upon hearing rival submissions advanced by learned Counsel for the respective parties, since the process of recruitment to the vacant posts indicated herein above has not so far been started and further the State respondents have also guaranteed adhering the recruitment Rules in the process of selection to the promotional posts, this writ petition is disposed of with a direction to the State respondents to follow the respective recruitment rules, as and when process of selection/promotion to the existing posts of Vice-Principal at Saiha and Lunglei and Group Instructor at Aizawl are taken up for consideration. Since the posts aforesaid are lying vacant for quite some time, the State respondents shall take up the process of selection/appointment to the aforesaid posts early.

14. In terms of the direction and observation made hereinabove, the writ petition stands disposed of. No order as to costs.