
(2004) 04 GAU CK 0048
In the Gauhati High Court
Case No : W.P (C) No's. 101 and 105 of 2002

T. Lalropuia

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Citation : (2004) 3 GLR 352 : (2004) 2 GLT 1541

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : George Raju, Ricky Gurung, C. Lalremzauva, A.R. Malhotra, Helen Dawngliani and R. Lalduhaini, for the Appellant; K.V. Tlangmawia, Aldrin Lallawmuzuala and Liansangzuala, for the Respondent

Judgement

B.K. Sharma, J.—Both the writ petitions have been heard analogously. The issue involved in the writ petitions is same. In WP(C) No. 101 of 2002 the writ petitioner (hereinafter referred to as "Petitioner No. I") seeks a direction for implementation of the recommendation made by the Mizoram Public Service Commission (in short MPSC) for his appointment as Asstt. Director of Forensic Science Laboratory, Mizoram under the respondents. On the other hand in WP(C) No. 105 of 2002 the writ petitioner (hereinafter referred to as "Petitioner No. IP") has prayed for setting aside and quashing of the recommendation made in favour of the Petitioner No. I.

2. The basic facts are not in dispute. The MPSC issued an advertisement No. 3 of 2001-2002 for two posts of Asstt. Director (Forensic) under Mizoram Police Department. The prescribed qualification laid down in the advertisement was M.Sc. (in Forensic, Chemistry, Physics, Mathematics, Zoology, Botany, Bio-Chemistry, Micro Biology, Bio-Physics etc.,) OR Bachelor of Science with Post Graduates. Diploma in Forensic Science with working experience in any recognised Forensic Science Laboratory with study in Mizo language upto Middle School Standard. Preference was to be given to those who were M.Sc. (Forensic) OR Bachelor of Science with Post Graduate Diploma in Forensic Science. The

recruitment rule for the said post of Asstt. Director provides for 100% direct recruitment. The educational qualification and other qualifications required for direct recruitment to the said post has been prescribed in the recruitment rules called as "Mizoram Police Department (Group "A" posts) Recruitment Rules, 2001" which is quoted below.

"1. M.Sc. (in Forensic, Chemistry, Physics, Mathematics, Zoology, Botany, Bio-Chemistry, Micro-Biology, Bio-Physics etc.) OR

Bachelor of Science with Post Graduate Diploma in Forensic Science;

With working experience in any recognised Forensic Science Laboratory.

2. Working knowledge of Mizo language up to Middle School Standard.

3. Preference will be given to M.Sc. (Forensic) or B.Sc. - with Post Graduate Diploma in Forensic Science."

3. All together 54 candidates applied for the posts including the two writ petitioners and the respondent No. 6 who got himself impleaded in WP(C) No. 105/2002. Out of the 54 applicants, 40 applicants held to be eligible by the MPSC, which included the two-writ petitioners and the respondents No. 6, were called for interview. Only 31 candidates including the writ petitioners and the respondent No. 6 appeared before the selection committee. The MPSC conducted the selection and recommended 3 candidates for appointment against the two posts. The petitioner No. 1 was placed at Serial No. 1 while the respondent No. 6 was placed at Sl. No. 2. The petitioner No. 2 was placed a Serial No. 3.

4. After the aforesaid recommendation made by the MPSC, the petitioner No. II made representations urging for cancellation of the recommendation made in favour of the petitioner No. I on the ground that he did not have working experience in any recognised Forensic Science Laboratory and thus was not even eligible to be called for interview. On the basis of such representations, the Government of Mizoram in the Home Department addressed a letter dated 8.1.2002 to the MPSC for review of their recommendation on the ground that the petitioner No. I did not have working experience in any recognized Forensic Laboratory. It is the legality and validity of this letter, which has been questioned by the petitioner No. I. He has. also prayed for a direction to the respondents to act lawfully, fairly and reasonably in the matter of appointment to the post of Asstt. Director (Forensic).

5. On the other hand the petitioner No. II has opposed the recommendation made in favour of the petitioner No. I. The basic stand taken in the writ petition is that as per the Recruitment Rules referred to above a candidate must possess working experience to be eligible for consideration for appointment as Asstt. Director. According to the writ petitioner, he had the working experience having worked in the Forensic Science Laboratory, Mizoram since 8.6.1999. It will be pertinent to mention here that the writ petitioner while was working as Sub-Inspector of Police in the police department was attached to the Forensic Science

Laboratory with effect from 8.6.1999 and he having worked there allegedly gained working experience as contemplated under the Recruitment Rules. Thus it is his case that as against his such working experience, the petitioner No. I did not have the working experience so as to be eligible to be considered for selection and appointment.

6. It is in the above back drop the rival contentions have been raised centering around legality and validity of the recommendation made in favour of the petitioner No. I. The petitioner No. II has naturally visualized that in the event of ousts of the petitioner No. I, he will get a chance for appointment against one of the two posts. So far as respondent No. 6 is concerned, nobody has questioned his recommendation. He was also attached to the Forensic Science Laboratory like that of the petitioner No. II while was working as Asstt. Sub Inspector of Police. In his case as well as in the case of the petitioner No. II, the Deputy Director. Forensic Science Laboratory, Mizoram gave individual certificate certifying their alleged experience having worked in the laboratory.

7. I have heard Mr. George Raju, learned counsel for the writ petitioner No. I, who has been arrayed as respondent No. 5 in the other writ petition. I have also heard Mr. A. R. Malhotra, learned counsel appearing for the petitioner No. II, who has also been arrayed as respondent No. 5 in WP(C) No. 101/2002. I have also heard Mr. K.V. Tlangmawia. for respondent No. 1 and Mr. Aldrin Lallawmzual AGA. Mizoram for the respondent Nos. 2, 3 and 4 as well as Mr. Liansangzuala who argued on behalf of the respondent No. 6.

8. Mr. George Raju, learned counsel appearing on behalf of the petition No. I submitted that a statutory body like MPSC having made the recommendation upon evaluation of the relevant materials, same cannot be called in question as has been sought to be done in the instant case. Referring to the academic qualifications of the petitioner he argued that the petitioner is undoubtedly much more meritorious and brilliant than the petitioner No. II. As regards the qualifications relating to working experience, he submitted that such experience is required only in respect of bachelor degree holder and not in respect of M.Sc. degree holder like that of the petitioner. According to him such a position is explicit on the face of the particular clause in the Recruitment Rules as has been quoted above. He further submitted that the petitioner No. II having obtained M.Sc. degree in December 1999, his alleged working experience in the Forensic Science Laboratory from June 1999 is inconsequential so far as the experience is concerned and that the experience can only be counted from the date of acquiring the required qualifications. Referring to the gazette notification dated 31.07.2000. he submitted that the Government of Mizoram approved the setting up of the Forensic Science Laboratory in the State of Mizoram only with the issuance of said notification and thus the alleged working experience of the respondent No. 5, i.e., the writ petitioner No. II prior to that is inconsequential. He further referred to the notification dated 9.1.02 by which the Government of Mizoram made a declaration to the effect that the State Forensic Science

Laboratory was non-commercial and in the nature of Science and Technology Institution under the Home Department to formulate expert opinion on all types of exhibits. Referring to this notification he submitted that the working experience even if any gathered by the respondent No. 5, i.e., writ petitioner II prior to the notification was of no consequence and he could not have gathered any experience prior to issuance of the said notification and thus was equally lacking experience. He finally argued that mere issuance of a certificate by the Deputy Director of Forensic Science Laboratory cannot bestow any right on the respondent No. 5.

9. Mr. A.R. Malhotra, learned counsel appearing on behalf of the petitioner No. II on the other hand submitted that on the face of the Recruitment Rule making provision for qualification for the post of Asstt. Director, it is clear that as against possession of the working experience by the petitioner, the petitioner in petition No. I did not have such experience, which naturally would disentitle him to be in the zone of consideration being not eligible to apply for the said post. As against the arguments of Mr. George Raju, learned counsel for the petitioner No. I that the experience of the petitioner No. II is inconsequential, Mr. Malhotra, learned counsel for the petitioner No. II submitted that even if the working experience gathered by the petitioner prior to December 1999 when he completed his M.Sc. and prior to the notification dated 31.7.2000 on which date the Forensic Science Laboratory in the State was approved by the Government, then also he had enough experience till the date of issuance of the advertisement on 28.8.2001. Thus he argued that the recommendation made in favour of petitioner No. I cannot be acted upon and such recommendation is liable to be cancelled.

10. The State of Mizoram has filed an affidavit supporting the interpretation given by the petitioner No. II. According to them the working experience as prescribed in the Recruitment Rules is a requirement both in the case of M.Sc. Degree holder and B.Sc. with Post Graduates Diploma in Forensic Science. According to them the petitioner No. I did not have the requisite qualification of working experience and thus a request was made to the MPSC to make a fresh selection. On the other hand the MPSC has justified its action by filing an affidavit. Their interpretation of the aforesaid clause of working experience is reflected in paragraph 3 of the affidavit.

"The Respondent No. I, after careful consideration of the provision of the Recruitment Rules is of the opinion that there could be two interpretation of the provision of the said Recruitment Rules. The first interpretation is that for all applicants possessing master degree/bachelor degree having working experience in forensic laboratory is compulsory requisite qualification. Secondly, on careful scrutiny of the Recruitment Rules, it could also be perceived that the first and foremost requisite qualification for the said post is Master Degree. If there are no candidates having Master Degree qualification then candidates having working experience in any Forensic Science Laboratory were eligible. Hence, Respondent No. I, based on the second interpretation of the said Recruitment Rules as

enumerated above has conducted the selection and recommended one candidate having Master Degree in Forensic Science and another candidate with bachelor degree in science having Diploma in Forensic Science and working experience in a recognized Forensic Laboratory."

11. I have considered the rival submissions made on behalf of the parties. I have also perused the materials on record including the records of selection produced by the learned counsel for the MPSC. There is no dispute that in the recommendation made by the MPSC the petitioner No. I has been placed at Serial No, 1 while the respondent No. 6 has been placed at Serial No. 2. On the other hand the petitioner No. II has been placed at Serial No. 3. It is also not in dispute that the advertisement in question was for two posts only. The qualification prescribed for the post has been quoted above. The whole controversy is as to whether the Clause relating to working experience is applicable only in respect of the B.Sc. degree holder with post graduate diploma in Forensic Science or the same is equally applicable in respect of M.Sc. degree holder. I have carefully considered the particular clause. The relevant clause under the head "Educational qualifications and other qualifications required for Direct recruitment" under which the above provisions have been made in the Recruitment Rules itself is suggestive that there are two parts relating to qualifications. One is "educational qualification" and the other one is "other qualification". In between M.Sc. in various subjects and Bachelor of Science with postgraduate diploma in forensic science there is "OR" meaning thereby that both the educational qualifications are considered to be equal as regards the eligibility. The words "with working experience in any recognized Forensic Science Laboratory" have been separated by a semi-colon, which is used to separate the parts of a sentence or item in a detailed list, showing a pause, i.e., longer than a "comma" but shorter than a "full stop". Same is made use of to separate parts of a sentence and to separate two main clauses, especially those not joined by a conjunction. Thus it cannot be said that the working experience is prescribed only in respect of the Bachelor of Science with postgraduate diploma in Forensic Science. On a plain reading of the qualification clause as quoted above, I am of the considered opinion that such working experience is required in case of M.Sc. degree holder also.

12. As per the heading of the clause itself the educational qualification for the post of Asstt. Director is either M. Sc. in the specified subjects or Bachelor of Science with postgraduate diploma in Forensic Science. These two requirements in a single sentence have been separated by a semi-colon with the sentence relating to working, experience. Thus the working experience is required in respect of both and it cannot be said that the same is a requirement only in respect of Bachelor of Science with postgraduate diploma in Forensic Science. This position is further fortified from Clause 3 of the particular column which provides for giving preference to M.Sc. (Forensic) OR B.Sc. with postgraduate diploma in Forensic Science. The stretch is in Forensic Science and accordingly B.Sc. degree preference has been provided to both M.Sc.(Forensic) degree holder

and B.Sc. degree holder with postgraduate diploma in Forensic Science. Thus, the intention of the Legislature is clear. They have equated the qualification of M.Sc.(Forensic) with that of B.Sc. with postgraduate diploma in Forensic Science. If that be so the working experience prescribed for the post incorporating the same in a sentence separate by a semi-colon shall be applicable for both i.e. M.Sc. in various subjects and B.Sc. with postgraduate diploma in Forensic Science.

13. After having held that the working experience is in the category of "other qualification" as prescribed in the relevant clause of the Recruitment Rules, it is now to be seen as to what will be the consequence to allegedly not possessing that qualification by the petitioner No. I and what will be the advantage of such qualification allegedly gathered by the writ petitioner No. II. The clause prescribing "other qualification" as with working experience in any recognized Forensic Science Laboratory" appears to be vague and indefinite. Firstly, it does not prescribe any length of experience. It also does not prescribe as to what should be the nature of experience. It cannot be said that any kind of experience gathered by an incumbent having worked in a Forensic Science Laboratory can be made use of or said to be the "working experience" having relevant and nexus to the post in question i.e. the Asstt. Director (Forensic). The Recruitment Rules has not prescribed the nature of working experience and the duration of the same. There should have been some indication as to the nature and requirements of the working experience, which could be said to be relevant for the post of Asstt. Director. One may have good numbers of years of experience working in any. Capacity in the Forensic Science Laboratory but the same may not be relevant for a particular post. On the other hand one may have limited but relevant working experience for a particular post. One may have longer duration on relevant working experience than another having shorter duration of relevant experience. In such a situation what will be the yardstick towards consideration of the case of the incumbents has not been specified in the Recruitment Rules. One may have a single day's of working experience but nothing has been specified as to whether that will also count towards working experience. One may argue that the term "working experience" necessarily means a reasonable period of working experience having nexus with the post. Then again the question of interpretation will come as to what will constitute reasonable period. Such a clause relating to prescribed qualification cannot be left open for further interpretation as per the liking and disliking of the authorities at the helm of affairs. The State Government shall do well towards qualifying the position relating to the clause "with working experience in an recognised Forensic Science Laboratory".

14. The records reveal that the petitioner No. I is otherwise having good academic records/Having studied M.Sc. in Forensic Science, he must have had practical experience working in the laboratories. As per the recommendations made by the MPSC he stood first securing higher marks than the petitioner No. II and the respondent No. 6. Marks were specified under different heads like

knowledge of subject and Personality Intelligence. General Bearing, General Knowledge, Expressions, Academic and Addl. Qualifications, etc. It was on that basis the selection was conducted and the petitioner was found to be the most suitable candidate. I have verified the records produced by the learned counsel for the MPSC. Although as against the names of the respondent No. 6 and the petitioner No. II two years of experience at FSL has been reflected, but in respect of no other candidate such experience is reflected. The statement prepared by the MPSC simply incorporated "two years working at FSL" against the names of the said two candidates, but it did not specify as to the nature of the working experience, its relevance and nexus in respect of the post of Asstt. Director (Forensic).

15. Time and again the Apex Court has held that the recommendations made by a statutory body like MPSC should not be interfered with lightly in exercise of power of judicial review under Article 226 of the Constitution of India. The MPSC has made the selection with their expertise making recommendation in favour of the two incumbents. The matter could have been resolved amicably, had there been 3(three) post of Asstt. Directors in as much as in such an eventually all the 3 contenders in this writ proceedings could have been accommodated. It will be pertinent to mention there that both the writ petitioners have not raised any grievance against the selection of the respondent No. 6. However, he could not be appointed in view of the on going litigation. Thus there is no impediment against his appointment so far as these writ proceedings are concerned.

16. The plea raised on behalf of the petitioner No. I as regards the working experience of the petitioner No. II in reference to the notifications dated 31.7.2000 and 9.1.2002(Annexures 4 and 5 to W.P (C) No. 105/02) equally needs consideration. The working experience under the Recruitment Rules is required to be had from a recognised Forensic Science Laboratory. There is same doubt relating to the stage from which the Forensic Science Laboratory, hi Mizoram in which the petitioner No. II allegedly gathered working experience, could be said to be a recognised Forensic Science Laboratory which became fully operational. The petitioner No. II cannot get the benefit of working experience prior to obtaining M.Sc. degree and not also prior to 31.7.2000 Between 1.8.2000 to 8.1.2002 (the intervening period between the said two notifications) what was the state of affairs with the Forensic Science Laboratory, Mizoram and whether it became fully operational as a recognised one is not discernible from the available materials.

17. In view of the above and upon answering the related interpretation as indicated above I remand the matter back to the State Government for a proper consideration of the matter and decision consistently taking into account the observations made above. They may also work out the feasibility of creating another post of Asstt. Director or any other equivalent post so as to accommodate all the three candidates involved in this writ proceedings. Entire exercise shall be carried out as expeditiously as possible. It is the expectation of

this court that the State Government shall consider the matter in such a manner so that the grievance of all the three candidates get redressed.

18. With the above observations and directions both the writ petitions stand disposed off.