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**(2007) 05 GAU CK 0012**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No. 19 of 2005**

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|---------------------------------|----|------------|
| V. Suakbuanga and Others        | Vs | APPELLANT  |
| H. Vanlalhluna (Dr.) and Others |    | RESPONDENT |

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**Date of Decision :** 31-05-2007

**Acts Referred:**

**Citation :** (2008) GLT 295 Supp

**Hon'ble Judges :** Hrishikesh Roy, J;A.B. Pal, J

**Bench :** Division Bench

**Advocate :** K.N. Choudhury, Michael Zothankhuma, Liansangzuala, Laltanpuia and I. Choudhury, for the Appellant; C. Lalramzauva, A.R. Malhotra, N. Sailo and K.V. Tlangmawia, for the Respondent

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## Judgement

Hrishikesh Roy, J.—Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. Michael Zothankhuma and Mr. I. Choudhury appearing on behalf of the Appellants. Also heard Mr. N. Sailo, learned Addl. A.G. along with Mrs. Dinari T. Azyu, learned A.G. appearing for respondent Nos. 3, 4 and 5. Mr. C. Lalramzauva appears and argues for respondent No. 1 & 2/Writ Petitioners.

2. By presenting this writ appeal, the Appellants challenge the judgment and order dated 15.7.05 rendered in WP (C) 102/03. In the writ proceeding the order dated 9.12.02 and 23.1.03 were under challenge at the instance of the two writ Petitioners who are respondent Nos. 1 & 2 in the present appeal proceeding.

3. By the Govt. order dated 9.12.02 impugned in the writ proceeding, the Appellants No. 1,2 & 3 who were holding the substantive posts of Selection Grade Lecturers were posted as Principals in various Colleges, as mentioned in the said impugned notification dated 9.12.02.

By the second Govt. notification dated 23.1.03, the Appellant No. 4 was transferred and posted from the post of Principal J. Buana College to the post of Principal, Government Serchhip College w.e.f. 1.2.03.

4. The writ Petitioners challenged the aforesaid impugned notifications dated 9.12.02 and 23.1.03 primarily on the ground that the authorities could not have appointed the Appellants to the post of Principal by the impugned order as the Appellants were not possessing the qualifications prescribed by the U.G.C. for being posted to the post of Principal.

5. It may be noted herein that the Appellants No. 1 -4 were initially appointed as Lecturers on 14.1.77, 19.7.73 and 13.1.77 respectively. Thereafter, the 4 Appellants moved to the grade of Senior Scale Lecturer, where after, they further moved to the Selection Grade Lecturer.

It maybe noted that the 4 Appellants had moved to the Selection Grade Lecturer on the basis of a selection exercise undertaken by the Mizoram Public Service Commission, for short MPSC.

Similarly the two writ Petitioners had also been substantively posted in the grade of Selection Grade Lecturer through the very same process of selection made by the MPSC.

6. In so far as the facts narrated above there is no dispute in the bar regarding the movement of the Appellants and the respondents to the grade of Selection Grade Lecturer.

It may further be noted that the Appellants are holding substantively the grade of Selection Grade Lecturer and respondents No. 1 & 2/the writ Petitioners are holding substantively the posts of Reader. It may be noted that the posts of Selection Grade Lecturer and the post of Reader carry the same pay scale, although separate seniority lists are maintained in respect of the Selection Grade lecturers and Readers, by the Appointing Authority.

7. The appointment to the posts of Principal, Lecturer etc. in Mizoram are governed by a set of Rules known as the Mizoram Education & Human Resources Development Department (Group-A posts) Recruitment Rules, 1987 hereinafter referred to as the 1987 Rules.

In terms of the aforesaid 1987 Rules, the posts of Principal is required to be filled up by promotion from the feeder post of Vice Principal/Professor MIE with not less than 5 years regular service in the grade. The posts of Principal is required to fill up by 100% promotion on the basis of selection to be made by the MPSC.

However when promotion cannot be made, as above, the 1987 Rules provides that posting to the post of Principal can also be made by transfer on deputation, from amongst Officer of Central/State Government holding analogous post.

8. By Govt. Notification dated 13.3.95 the feeder posts of Vice Principal and Professor of Colleges were abolished by conversion and accordingly the prescribed procedure of making promotion to the post of Principal from the feeder post of Vice Principal and Professor was rendered unworkable.

9. The Appellant No. 1 Suakbuanga, while functioning as Selection Grade

Lecturer of Lunglei Government College was transferred and posted as Principal of Government Champhai College by notification dated 3.2.97.

Appellant No. 2 F.J. Ralzuala, who was also functioning as a Selection Grade Lecturer of Lunglei Govt. College was ordered by notification dated 17.8.99 to take charge of the post of Principal in Govt. Aizawl College.

The Appellant No. 3 R. Biaksanga, who was functioning as Professor of Lunglei Govt. College was posted as Principal of J. Buarta College, Lunglei initially a period of two years by notification dated 5.2.90. Eventually the Appellant No. 3 by notification dated 7.11.96 while functioning as acting Principal Lunglei Govt. College was transferred and posted to the vacant post of Principal Govt. Serchhip College.

The Appellant No. 4 V.T. Zuala was appointed as Principal on 18.11.1996 and was allowed to hold the post of Principal in J. Buana College on deputation basis.

10. It might be appropriate at this stage to take note of the differences in the words of the notifications whereby the 4 (four) Appellants were posted and allowed to function as Principal of the various Colleges.

For instance Appellant No. 1 & 3 Suakbuanga and R. Biaksanga were transferred and posted to the post of Principal by notifications dated 3.2.97 and 7.11.96 respectively.

Whereas the Appellant No. 2 F.J. Ralzuala was permitted to hold charge of Principal by notification dated 17.8.99 by ordering temporarily transfer and posting for holding the charge of principal in Govt. College, Aizawl without any additional financial benefit.

But the Appellant No. 4 V.T. Zuala was the only person who was appointed as Principal and was allowed to continue on deputation basis as Principal of J.B. College Lunglei at the relevant point of time.

11. Consequent upon introduction of the U.G.C. pay scales and pursuant to directions of this Court in Civil Rule No. 25/96, a notification-dated 7.9.98 issued by the Government, prescribing the criteria for appointment of Principal in Govt. Colleges in Mizoram.

By the said notification, appointment to the post of Principal in Govt. Colleges were required to be made on the basis of seniority-cum-merit from amongst the Lecturers in the Selection Grade and Reader with adequate seniority. Other requirements were also prescribed in the said notification dated 7.9.98. That apart, it was further specified that the appointment to the posts of Principal are to be made through a process of selection to be conducted by the MPSC.

12. What could be noticed on introduction of the criteria notified on 7.9.98 is that lecturers in Selection Grade and Readers have been made the feeder posts for being considered for appointment by promotion to the posts of Principal. But under the provisions of the 1987 Rules, the promotion were to be made through

process of promotion from amongst Vice Principal/Professor.

However, the alternate method for appointment to the post of Principal i.e. by transfer on deputation as prescribed in the 1987 Rules were not affected by the criteria notified on 7.9.98.

13. While the Appellants were functioning in the posts of Principal on the basis of various notifications issued during 1996 to 1999 as aforesaid, the State respondents issued the first impugned notification dated 9.12.02 whereby the Appellants No. 1, 2 & 3 were appointed to the post of Principal and their new place of posting in different Colleges were notified by the notification dated 9.12.02.

Similarly the Appellant No. 4 was also posted as Principal by the second impugned notification dated 23.1.03 issued by the Government.

14. The writ Petitioners/respondents No. 1 & 2, although did not choose to challenge the orders of posting of the Appellants as Principals in different Colleges on deputation basis, felt aggrieved by the issuance of the aforesaid orders dated 9.12.02 and 23.1.03 and filed W.P.C. No. 102/03 seeking to challenge the said orders dated 9.12.02 and 23.1.03 issued in favour of the four Appellants.

15. The writ Petitioners contended before the learned Single Judge, that the State Govt. by notification dated 12.10.99 adopted the U.G.C. norms containing, inter-alia, the qualification for appointment and since the qualification prescribed by the UGC for appointment to the posts of Principal, more particularly the requirement of having a Ph.D. Degree was not fulfilled by the Appellants, they could not have been appointed to the posts of Principal.

The next point urged while challenging the appointments of the Appellants was that the Appellants were not appointed to the posts of Principal through a process of selection conducted by the MPSC.

On the basis of the aforesaid contentions the two writ Petitioners sought a direction for making appointments to the posts of Principal on the basis of the U.G.C. Guidelines prescribed and adopted by the State of Mizoram,

16. The State respondents, while supporting the appointments of the Appellants to the posts of Principal contended before the learned Single Judge, that all the Appellants were transferred and posted to the posts of Principal long before the issuance of the Govt. Notification dated 12.10.99 adopting the U.G.C. scheme of 1998 and accordingly the requirements of possessing the minimum qualification prescribed by the U.G.C. should not apply to the cases of the Appellants.

Secondly, it was contended on behalf of the State that as the pay scale prescribed for the posts of Principal and that of Selection Grade Lecturers being same, and since the Appellants were permitted to move to the Selection Grade Lecturers by a process of selection by the MPSC, no fresh selection by the MPSC

is called for, before posting them as Principals on deputation basis to the posts of Principal.

Another contention advanced on behalf of the State was that the 1987 Rules did not prescribe any qualification in the nature of Ph.D. prescribed by the U.G.C. and as such requiring the Appellants to satisfy the qualifications prescribed by the U.G.C. is unnecessary as they were posted as Principals, much before adoption of the U.G.C. norms by the Govt. of Mizoram.

The final contention advanced on behalf of the State was that the prescribed U.G.C. norms would be applicable only in case of appointment to the posts of Principal by direct recruitment but the said criteria prescribed by the U.G.C. would not apply in case of appointment by transfer on deputation as is envisaged under the 1987 Rules.

17. It was contended on behalf of the Appellants who were respondents in the writ proceedings that the minimum qualification prescribed for the post of Principal which were notified by the Mizoram Government on 12.10.99 do not apply in case of the Appellants who were made Principals before the said notifications came in force.

It was further contended that the Appellants are senior to the writ Petitioners. They were working as Selection Grade Lecturers at the relevant point of time and were posted to the posts of Principal on the basis of the alternative method prescribed in the 1987 Rules i.e. by transfer on deputation. The contentions advanced on behalf of the State were also additionally urged on behalf of the Appellants, in course of the writ proceeding.

18. It appears from the impugned judgment that the learned Single Judge took note of the Mizoram Govt. notification dated 12.10.99 which adopted the U.G.C. Scheme of 1998. The said UGC scheme was thereafter converted into a Regulation known as the University Grants Commissions (minimum qualification required for the appointment and career advancement of teachers in Universities and institutions affiliated to it) Regulation, 2000 (hereinafter referred to as "the 2000 Regulation") Having noted the criteria prescribed by the U.G.C. the learned Single Judge held that the Appellants did not have the requisite qualifications for being posted as Principals, as stipulated in the 1991 scheme of the U.G.C. and the 2000 Regulations.

The learned Single Judge also noted that before appointment of the Appellants, no selection exercise by the MPSC had taken place.

19. It was also noted in the impugned judgment that the three of the Appellants were initially posted as Principals by way of transfer on deputation and were thereafter appointed to the posts of Principal by the impugned notification dated 9.12.02.

The Appellant No. 4 was also transferred and posted as Principal by the second impugned notification dated 23.1.03 and that none of the Appellants had been

appointed substantively to the posts of Principal.

The learned Single Judge further found that it is essential for the Government while making appointment to the post of Principal to follow the U.G.C. prescribed norms and the provisions of the 2000 Regulations, as the Mizoram Govt. has adopted the U.G.C. Scheme by issuing notification dated 12.10.99 and accordingly the learned Single Judge held that the posting of the four Appellants to the posts of Principal, being contrary to the U.G.C. Scheme and the 2000 Regulations, are not sustainable in law. Accordingly, the impugned notifications dated 9.12.02 and 23.1.03 were interfered with by the learned Single Judge.

The learned Single Judge further directed the State respondents to fill up the posts of Principal in accordance with the provisions contained in the 2000 Regulations at the earliest.

20. In the impugned judgment the learned Single Judge took the view that the posts of Principal is required to be filled up by direct recruitment in terms of the provisions contained in 2000 Regulations and accordingly concluded that a candidate must possess the requisite qualifications as prescribed by the U.G.C.

21. It is specifically contended on behalf of the Appellants that they were not substantively appointed to the posts of Principal of the Colleges and were appointed on the basis of the alternate mode prescribed in the 1987 Rules and since their initial posting to the posts of Principal were not challenged by the writ Petitioners and only their subsequent posting orders made on 9.12.02 and 23.1.03 were challenged, the directions given by the learned Single Judge, setting aside the said posting orders are clearly liable to be interfered with in the present appellate proceedings.

22. In view of the submissions made it would be necessary for the Appellate Court to closely scrutinize the purport of the two impugned notifications, which were under challenge in the writ proceedings.

The first notification dated 9.12.02 indicated that the same was issued in pursuant to the earlier departmental notification dated 3.2.97 (in respect of Appellant No. 1); notification dated 17.8.99 (in respect of Appellant No. 2); notification dated 7.11.86 (in respect of Appellant No. 3).

Therefore, although at a first blush it appears that the notification dated 9.12.02 was a fresh appointment order appointing the 3 Appellants to the posts of Principal, in reality it is not so. In fact, much earlier to the impugned notification dated 9.12.02, the three Appellants came to be posted as Principal, as is clearly indicated in the impugned notification itself.

Similarly the second impugned notification dated 23.1.03 was not the notification whereby the Appellant No. 4 was posted for the first time as principal of College as the said Appellant was posted as a principal as far back as on 18.11.96.

23. However, the learned Single Judge proceeded on the basis that by the two

impugned notifications dated 9.12.02 and 23.1.03, the four Appellants were freshly appointed to the posts of Principal and on the basis of such impression, it was held that such fresh appointments on 9.12.02 and 23.1.03 could not be given to the Appellants, without adhering to the norms prescribed by the U.G.C. for making appointment to the post of Principal.

24. It may also be noted that by notification dated 3.4.91 the Mizoram Govt. already implemented the scheme of revision of pay scale of, inter-alia, teachers in Colleges and Universities, as per the scheme appended to the said notification dated 3.4.91.

It appears from Clause 5 of the scheme that no criteria for appointment to the post of Principal was prescribed and that was left to be laid down by the State Government.

Even later on, the U.G.C. while prescribing a scheme in the year 1998 had not prescribed the criteria for making appointment to the post of Principal of Colleges although qualification were prescribed for making direct recruitment to the post of Principal.

Significantly, in the U.G.C. prescribed regulation of 1998, methods of recruitment and promotion to the post of lecturers, Readers and professors were elaborately prescribed by the U.G.C. including the qualifications needed in the post of Selection Grade Lecturers, Readers and Professors.

25. Mr. C. Lalramzauva learned Counsel representing the respondent/writ Petitioners submits that the appointment to the post of Principal has to be made only under the 2000 Regulation which according to him, permits appointment through direct recruitment only and not by promotion.

The learned Counsel for the writ Petitioners/respondents also submits that the Appellants, at the time of being posted as Principal were not selected and recommended by the MPSC as required under 1987 Rules and accordingly, the Appellants would have no right to continue in the post of Principal as the said posting is contrary to the provisions of the 1987 Rules.

It is further contended that so far as the appointment by transfer on deputation is concerned, such transfer on deputation could only be made from amongst Central/State Government officers holding analogous post. Since the Appellants were functioning as selection grade Lecturers and cannot be said to be holding analogous posts under the State and Central Government officer, they could not have been posted as Principal on the basis of criteria of transfer on deputation.

It is further contended since the University Grant Commission has already prescribed the qualification for holding the post of Principal, the action of the respondent authority in permitting the Appellants to continue in the post of Principal without possessing the qualification prescribed by the UGC, is contrary to law and the said continuation is liable to be interfered by this Court.

The learned Counsel has relied upon the decision reported in University of Delhi Vs. Raj Singh and others, wherein it is indicated that when there is a conflict between the regulation prescribed by the UGC and prescription made by the University on qualification, the regulation of the UGC would prevail.

26. What we find in the 2000 Regulation is that it merely prescribe the academic qualifications for the post of Principal but does not prescribe the method of recruitment and appointment for the post of Principal.

As has already been noticed, under the 1991 scheme that it was left to the State Government to prescribe the rules for appointment to the post of Principal.

By the notification of Mizoram Government dated 7.9.98 it was prescribed that appointment to the post of Principal is to be made by promotion through a process of selection to be made by the MPSC from amongst the feeder posts of Lecturer in selection grade and Readers with adequate seniority.

Notwithstanding the non prescription of the method of recruitment to the post of Principal by the 2000 Regulation, the learned Single Judge by the impugned judgment held that the post of Principal is "required to be filled up by direct recruitment in terms of the provisions contained in 2000 Regulation" of the UGC.

27. In our view the aforesaid conclusion drawn by the learned Single Judge is contrary to the provisions contained in 2000 Regulation inasmuch as, the said regulation have not prescribed any method for filling up the post of Principal by direct recruitment as has been held by the learned Single Judge.

28. That apart, the aforesaid direction for filling up the post of Principal only by direct recruitment would also be contrary to the method prescribed under 1987 Rules. The provisions is also made in the office memorandum dated 7.9.98 of the Government, whereby a method other than direct recruitment namely, by promotion has been prescribed as a method for making appointment to the post of Principal. It may also be noted under 1987 rules, when promotion to the post of Principal cannot be made, appointment by transfer on deputation to the post of Principal is envisaged.

29. None of the Appellants herein have been substantively appointed to the post of Principal either under 1987 Rules or under Govt. memorandum dated 7.9.98. Instead, it appears to be a case where the Appellants have been posted to the post of Principal by way of transfer on deputation.

The writ Petitioner never challenged the aforesaid posting of the Appellants to the post of Principal by the alternative method prescribed under 1987 Rules when it was made during 1996 to 1999 and challenged it only when they were reposted in different colleges by the two impugned notifications dated 9.12.2002 and 23.1.2003.

30. It is submitted by Mr. K.N. Choudhury, learned senior counsel, on behalf of the Appellants that the failure of the writ Petitioner to challenge the initial

posting orders of the Appellants to the posts of Principal, would disentitle the writ Petitioners from getting any relief from this Court.

In support of this contention, the learned Counsel for the Appellant has relied upon the decision in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, and Government of Maharashtra and Others Vs. Deokar's Distillery,

The learned Counsel for the Appellant has also relied upon the decision in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and contends that the prescription made by the UGC came to be adopted by the Government of Mizoram on 12.10.99 and it would not affect the appointment and functioning of the Appellants in the post of Principal since the said postings were made in terms of 1987 Rules, which occupied the field at the relevant point of time.

31. We have carefully considered the submission advanced by the learned Counsels. Having considered the submission advanced by the learned Counsel, we are of the opinion that the notification dated 9.12.02 and 23.1.03 under challenge in the writ proceeding, were not fresh appointment orders issued in favour of the Appellants and the conclusion to the contrary of the learned Single Judge are not correct.

32. It appears to us that the Appellants were appointed to the posts of Principal much earlier in the year 1996-97 and 1999 through the method of transfer by deputation, as is prescribed as an alternate mode of posting to the post of Principal under the 1987 Rules.

33. Accordingly the finding given by the learned Single Judge that the said two impugned notifications dt. 9.12.2002 and 23.01.2003 are orders of appointment of the Appellants in substantive capacity, is not sustainable and the same is accordingly, set aside and quashed.

34. We further find from conjoint reading of 1987 Rules as well as the prescription made by the Govt. Memorandum dated 7.9.98 that appointment to the post of Principal is required to be made by promotion through a process of selection to be conducted by the MPSC, from amongst the feeder posts of Lecturers in selection grade and Readers and no prescription on the method of making appointment to the post of Principal has been prescribed under 2000 Regulation.

When substantive appointments cannot be made in terms of 1987 Rules or the Office Memorandum dated 7.9.98, the alternative method prescribed by the 1987 Rules can be adopted, which provides for posting on the basis of transfer on deputation, to the post of Principal.

35. It appears to us that the qualification prescribed by the UGC for the post of Principal, relate to direct recruitment process and the said qualification criterion cannot automatically be applied to the recruitment process made through the methods of promotion without incorporating the said qualification criterion by appropriate amendment of the Recruitment Rules.

The Government has not as yet prescribed and adopted UGC prescription on the academic criterion for the post of Principal. By issuing the memorandum dated 7.9.98 the Government of Mizoram have adopted the UGC pay scale and have also provided for the methods of recruitment to the post of Principal by a process of selection. But we find that the educational qualification prescribed for the post of Principal for making direct recruitment, have not been adopted in the said Govt. notification dated 7.9.98.

36. We are therefore, not in a position to declare that the qualification prescribed by the UGC for making direct recruitment to the post of Principal, would automatically apply for a methods of recruitment by promotion to the post of Principal, without necessary amendment of the Rules or without appropriate exercise incorporating the same, by appropriate notification.

37. As filling up of the post of Principal by transfer on deputation can only be a temporary arrangement on failure to make regular appointment by promotion, we are of the view that such arrangement should not be permitted to continue to indefinitely.

Accordingly we are not inclined to interfere with the direction given by the learned single Judge for filling up the post of Principal on substantive basis. However, the direction of the learned Single Judge to fill up the said post in accordance with the 2000 regulation, in view of the reasoning already given, cannot be sustained.

Now it would be open to the Government to fill up the said post on substantive basis in terms of 1987 Rules read with the Govt. memorandum dated 7.9.98. The government may undertake the process after incorporating UGC prescribed educational qualifications by appropriate exercise as maybe advised.

The writ appeal is ordered accordingly in terms of the above directions.