

IN THE GAUHATI HIGH COURT

**(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA:
MANIPUR: TRIPURA: MIZORAM AND ARUNACHAL PRADESH)**

AIZAWL BENCH

WP (C) No. 2 of 2012

1. Shri Wilfred Vanlalliana,
S/o H S Khamzamang,
D/Ch-134, Dinthar-1,
Aizawl, Mizoram.
2. Smt C Lalzemawii,
D/o Sh. HK Cheuva,
Aizawl Venglai, Aizawl.
3. Smt Irene Zodinmawii,
D/o Sh. Malsawmkima,
H.No. A -98, Ramhlun Vengthar,
Aizawl, Mizoram.
4. Smt Rebecca Zonunmawii Sailo,
D/o Sh S Lalthanghluta Sailo,
H.No.- K-3, Republic Hmar Veng,
Aizawl.
5. Smt Lalhmangaihthangi,
D/o Smt Malsawmi,
H.No. A 128, Armed Veng,
Aizawl, Mizoram.
6. Sh Lalrinzuala Pachuau,
S/o Sh Tawnenga,
MV-14, Mission Veng,
Aizawl, Mizoram.
7. Sh Paul Lalthuamsanga,
S/o Sh H Thanglura,
H. No. B 191, Chawnpui Veng,
Aizawl, Mizoram.
8. Sh H Lalnunfela,
S/o Sh Vanlalmawia,
CNB:K-32/b, Lily Veng,
Aizawl, Mizoram.

9. Smt Lucy Lalrinmawii,
D/o Sh R Vanlalhluna,
Tuivamit, Luangmual Power Complex,
Aizawl, Mizoram.
10. Smt C Lalhmingiangi,
D/o Sh Zokhumi,
C/o R K Lianzuala,
H. No. C-106C, Bethlehem Veng,
Aizawl, Mizoram.
11. Sh C Chawngzikpuia,
S/o Sh J Denghlira,
H. No. D/T - 166, MILAN HOME,
Aizawl, Mizoram.
12. Sh Laldinliana,
S/o Sh P C Chawithuama,
H. No. T s/c-021, Field Veng,
Aizawl, Mizoram.
13. Sh V Lalhmingliana,
S/o Sh V Lalhranga,
D-67/III Basic Mual,
Ramhlun North,
Aizawl, Mizoram.
14. Sh K Lalmuankima,
S/o Sh K Lalrammawia (L),
H.No. A-1 C-5, Salem Veng,
Aizawl, Mizoram.
15. Sh Laldinpuia,
S/o Sh C Chawngthuama,
H. No. 392, CP-Road, Tlangnuam,
Aizawl, Mizoram.

..... Writ Petitioners

-Versus-

1. The State of Mizoram, represented
by the Chief Secretary to the Govt.
of Mizoram, Aizawl.
2. The Secretary to the Govt. of Mizoram,
DP & AR (GSW), Aizawl, Mizoram.
3. The Commissioner/Secretary to the
Govt. of Mizoram, Power & Electricity
Deptt., Aizawl, Mizoram.

4. The Mizoram Public Service Commission,
Represented by its Chairman,
New Secretariat Complex,
Aizawl, Mizoram.

..... Respondents.

Advocate for the petitioners : Mr. N. Sailo, Sr. Advocate

Advocate for the respondents: Mr. Lalsawirema, G.A.
Mr. Lalfakawma,
SC, MPSC.

PRESENT
HON'BLE MR. JUSTICE B D AGARWAL

Date of hearing : 23.08.2012

Date of Judgment : 18.09.2012

JUDGEMENT AND ORDER (CAV)

The writ petitioners herein are the aspirants to the post of Asstt. Engineer/SDO (Electrical) in response to advertisement dated 31.5.2011, issued by the Mizoram Public Service Commission (MPSC) for selection of 13 candidates of Asstt. Engineer in the Power and Electricity Department, Govt. of Mizoram. While the process of recruitment was in progress, the Govt. of Mizoram, P & E Department informed the MPSC that out of 13 posts, 5 posts shall be filled up from graduates in Electrical Engineering; 4 posts from graduates in Electronic Engineering and 4 posts from graduates in Mechanical Engineering vide letter dated 20.6.2011. Pursuant to this information, the MPSC issued corrigendum to the recruitment advertisement No.1 for the year 2011-12 on

24.6.2011, specifying the disciplined-wise educational qualifications for 13 posts. Thereafter, the Power and Electricity Department made a volte-face and requested MPSC to adhere to the Rule 4(2) (ii) (a) of the Mizoram Engineering Service Rules, 2001. Referring to the opinion of the Department of Personnel and Administrative Reforms (DP & AR), the MPSC was told that there is no scope of discipline-wise reservation of posts of engineer in its letter dated 8.8.2011. In view of this communication from the P & E Department, the MPSC issued second corrigendum on 12.9.2011, cancelling the discipline-wise division of 13 posts and also made it clear that the candidates having Electronics and Telecommunication Engineering degree are not qualified/eligible to sit in the written test. This corrigendum dated 12.9.2011 issued by the MPSC was further supplemented by the letter dated 21.11.2011 written by P & E Department to the MPSC, reproducing the opinion of the DP & AR to the effect that Electronics and Communication Engineering and Electronic and Telecommunication Engineering are not specified qualification in the MES Rules, 2001. Pursuant to the second corrigendum dated 12.9.2011 and the P & E Department's letter dated 11.11.2011, the applications of the writ petitioners were finally rejected on 30.11.2011. Hence, the petitioners are challenging the second Corrigendum dated 12.9.2011, P & E Department's letter dated 21.11.2011 and the applicants' rejection letter dated 30.11.2011 by way of filing this writ petition under Article 226 of the Constitution of India.

2. Heard the arguments of Mr. N. Sailo, learned Sr. counsel for the writ petitioners as well as Mr. Lalsawirema, learned Govt. Advocate for the official respondents and Mr. Lalfakawma, learned Standing counsel for the MPSC. I have also gone through the pleadings of the writ petitioners and the respondents.

3. During the pendency of the writ petition, the State respondents agreed to obtain expert opinion from the Indian Institute of Technology, Guwahati and, finding a prima-facie case of the petitioners, directed the MPSC to allow the writ petitioners to sit in the written test vide order dated 10.1.2012. Accordingly, the writ petitioners have already appeared in the written test but the result has been withheld by the MPSC as ordered by this court.

4. Mr. Sailo, learned Sr. counsel for the writ petitioner submitted that “Mizoram Engineering Service Rules” was constituted in the year 1995 by notifying the MES Rules, 1995. These Rules were subsequently repealed by the MES Rules, 2001. According to the learned counsel, in the 1995 Rules, the Power and Electricity cadre included posts of Electrical/Electronic Engineering under P & E Department as well as PWD. According to the learned counsel, though P & E and PWD cadres were separated under 2001 Rules, the power department continued to consist of posts of Electricals, Electronics and Mechanical Engineers.

5. The learned Sr. counsel for the writ petitioners further submitted that in the original advertisement there was no

negative stipulation that the candidates holding degrees in Electronics & Communication will not be eligible for the posts of Asstt. Engineers and as such the MPSC cannot change the terms and conditions of the advertisement subsequently. The learned counsel also submitted that from the letter dated 20.6.2011 from P & E Department to the MPSC it is explicitly clear that the department need engineering graduates from various disciplines, including Electronics Engineering. The learned counsel also pointed out that in the past also the department had recruited candidates possessing degree in Electronics Engineering and as such candidates were also allowed to sit in the written examination for the post of Asstt. Engineer (Electrical Wing) under the P & E Department in the year 2007. The learned counsel for the petitioners also submitted that opinion of various engineering institutes, obtained by the State respondents, also endorses the theory that a candidate possessing a degree in Electronics and Communication includes a degree in Electronics and as such the decision of the respondents to reject the candidature of the writ petitioners is nothing but arbitrary, misconceived and at least giving narrow interpretation of the qualification required for Asstt. Engineers and as such, the impugned decision is liable to be set aside.

6. Per contra, the learned Govt. counsel submitted that 2001 Rules does not admit recruiting graduates having degrees in Electronics and Communication or Electronics and Telecommunication. According to the learned counsel, the scope and objective of P & E Department is to generate and

transmit electric power, including non-conventional energy, which essentially does not require services of Communication Engineers. The learned Govt. counsel also contended that if candidates having degrees in Communication Engineering are considered to be equivalent to the Electronics Engineering then the candidates having degrees in Instrumentation Engineering, Computer Science, Mechanical Engineering etc would also claim for appointment as Asstt. Engineers in the P & E Department and this would be against the requirements of the Rules. The learned Govt. counsel also submitted that opinion of the engineering institutes does not support the petitioners claim that they are equivalent to the Electronics Engineering.

7. The learned Govt. counsel also raised a technical objection about the maintainability of the writ petition pleading that in case of any question regarding interpretation of the Rules the matter should be referred to the Governor, whose decision thereon shall be final. This submission was made on the basis of Rule 30 of 2001 Rules.

8. From the documents annexed with the writ petition, it appears that the Government's attention was drawn to Rule 30 by the MPSC in its letter dated 30.9.2011 and despite that the matter was not referred to the Governor. Instead, after filing of the writ petition in the month of January, 2012, the Government volunteered to obtain opinion from the engineering institutes. In this way, the State respondents waived their right to refer the question of interpretation of educational qualification to the Governor.

9. The above apart, Mr. Sailo, learned Sr. counsel also submitted that the Governor takes a decision on the basis of advice from the concerned department and if necessary from the cabinet. According to the learned counsel, DP & AR is the nodal department for this purpose and since the said department has already given its opinion that Electronics and Communication Engineering and Electronics and Telecom Engineering are not incorporated in the MES Rules it would be a futile exercise to refer the matter to the Governor. I find sufficient force in the submission of the learned counsel for the writ petitioners and, resultantly, the objection raised by the learned Govt. counsel is hereby overruled.

10. For effective disposal of this writ petition, it would be just and proper to quote the relevant provisions of the 1995 Rules and 2001 Rules, which are as below:

10.1 **M.E.S. Rules, 1995:**

"4 (ii) Power & Electricity Cadre, which shall include all posts of electrical/electronics engineer under Power & Electricity Department and Public Works Department."

Pursuant to the requirement of the Rules the technical qualification for recruitment of Assistant Engineers was described in Schedule -B as below:

"Degree in the concerned Engineering Branch or its equivalent".

10.2 **M.E.S. Rules 2001:**

"Rule 4 (2) (ii): Power & Electricity Cadre, which shall include the following separate wing:-

*(a)Electrical Wing, which shall consist of the posts of
Electricals/Electronics/Mechanical Engineers under
Power & Electricity Department.*

*(b)Civil Wing, which shall consist of all the posts of Civil
Engineers under Power & Electricity Department."*

*"Rule 12: No person shall be appointed to the service by
direct recruitment unless-*

*(a) He holds an Engineering Degree or equivalent
qualification in the appropriate line from any Indian
University/Institution or Foreign University/Institution
recognized by the Government.*

OR

*He has passed Section A and B of the Associate
Membership of Engineers (Indian) and possessing
Certificate to that effect from the Institution of
Engineers."*

Pursuant to the requirement of the Rules, the technical qualification for recruitment of Assistant Engineers was described in Schedule - B below :

*"Degree in the concerned engineering branch or it is
equivalent"*

11. A comparison of 1995 Rules and 2001 Rules shows that there is a common feature in both the Rules so far as the educational qualification for Assistant Engineers is concerned. In both the Rules, persons having degree in Electricals or Electronics or mechanical or its equivalent engineering degrees are qualified for recruitment as Asst. Engineers/ SDOs.

12. Now the issue raised in this writ petition is as to whether a candidate having a degree in Electronics and

Communication can also be considered as a person having degree in Electronics.

13. As noted earlier, during the pendency of the writ petition, the State respondents had obtained opinion from a few technical institutes. The I.I.T, Guwahati has opined that it would depend on the course content in a particular institution. However, in its opinion a candidate possessing Electrical and Communication Engineering or Electronics or Telecommunication Engineering etc may be considered to be equivalent for a normal appointment or for admission to a M. Tech programme. The opinion has been further elaborated by noting that some IITs give only one degree in Electrical Engineering and as such a candidate with an Electrical Engineering may also qualify for Electronic Engineering. In other words, as per I.I.T., Guwahati both the degrees are equivalent.

14. The aforesaid opinion was given by the Director of IIT, Guwahati on 8.2.2011. Subsequent to that the Dean of Academic Affairs, I.I.T., Guwahati gave a further report to the extent that the I.I. T., Guwahati has two B. Tech streams viz. (i) Electronics and Communication Engineering and (ii) Electronics and Electrical Engineering. As per this report, the first one is not equivalent to B.Tech or B.E. in Electronics Engineering but the second course can be considered equivalent to B. Tech or B. E. However, this report was not a complete one inasmuch as the dean of the Academic Affairs, I.I.T. did not clarify as to whether a degree in Electronics and

Communication Engineering is equivalent to B. Tech/B.E. in Electronics.

15. The second opinion was received from a private engineering college from Mumbai. This institute gave its opinion on 13.2.2012 that Electronics and Telecom Engineering and Electronics and Communication Engineering are one and the same. It further opined that the difference in the course of syllabus of Electronics Engineering and Electronics and Communication Engineering is only 15 to 20 %.

16. Third opinion was received from another engineering college, Gujarat on 22.2.2012. This college also opined that the branches named as Electronics and Communication etc. are related to Electronics Engineering but the degree implies special syllabus targeted for particular sub branches of Electronics Engineering. This institute further opined that in the Electronics Engineering the fundamentals of electronic subjects as well as few courses from 'application of electronics point of view' is covered.

17. In view of the aforesaid opinion of the different Engineering Institutes, it cannot be said that a candidate possessing a degree for electronics and communication will have no idea of electrical engineering and such a degree cannot be treated as equivalent to an engineering degree. It appears to me that an institute giving a degree of Electronics and Communication Engineering may give special attention in a particular area of its total course in telecommunication

but that is not at the cost of giving sufficient knowledge of electrical engineering.

18. Some of the engineering colleges may have five year degree courses and some colleges may have four year degree course. In that situation also a candidate cannot be treated with difference unless it is specifically mentioned in the Service Rules or Recruitment Rules and specifically clarify it in the advertisement. In the M.E.S 2001 Rules, there is no such stipulation that a candidate having a degree in engineering with 5 year or 4 year course, excluding Telecommunication branch will only be eligible for direct recruitment to the post of Asstt. Engineer.

19. In some of the administrative departments candidates having graduate degrees are eligible for clerical jobs. No distinction is made for the graduates in Arts, Commerce and Science stream. All such graduates are treated at par. Similarly, for being appointed as a Judicial Officer a degree in law is essential. Till date a good number of Universities are still giving LLB degrees with three years course and some of Law Schools have started 5 years degree courses. At the same time, LLB degrees in three years course can be obtained by a person who has graduated in Arts, Commerce, Science or even a person having degree in engineering or medical science. Similarly, some candidates may have taken 5 year degree course in LLB and some others 3 year degree course. However, no distinction can be made to the candidates coming from different streams unless the Rules clearly spell out its requirement.

20. I have already referred to a letter dated 20.6.2011 issued from the office of the P & E Department to the MPSC that 13 posts of Asstt. Engineer/SDO should be divided in 5 posts for Electrical Engineering; 4 posts of Electronics Engineering and 4 posts for Mechanical Engineering course. Hence, it cannot be said that the department has no requirement of Electronic Engineers. I have already opined earlier that Electrical Engineering will include Electronics and Communication Engineering. Besides this, the appointments are to be made after a written test, which will be followed by oral interview. Hence, the MPSC is presumed to have set the question papers as per the special requirement of the department and in the oral interview also special emphasis can be given to the electrical engineering. If a candidate can do well and is selected on his or her own merit and suitability, there is no harm if his or her degree course includes some amount of telecommunication subject. In my considered opinion, it will be an additional gain to the department to get meritorious candidates having sound knowledge of electronics engineering, with extra subjects in telecommunication, since the telecommunication has become an essential component in each and every department.

21. For the reasons set out hereinabove, I hold that at this stage and under the existing Rules, the writ petitioners cannot be deprived of from being considered for their selection to the posts of Asstt. Engineer/SDO in P & E Department on merit.

22. Resultantly, the writ petition stands allowed. The MPSC (Respondent No. 4) is directed to publish the result and proceed further.

Upadhaya

JUDGE