

**IN THE GAUHATI HIGH COURT**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND  
ARUNACHAL PRADESH)

**WP(C) No. 21 of 2012**

PETITIONERS:

1. Sh. N.C. Khaihmo,  
S/o Lairua (L),  
R/o Maubawk,  
Saiha District, Saiha.
2. Sh. Khohmo,  
S/o Malao (L),  
R/o Tusih Village,  
Saiha District.
3. Sh. C. Lalhranga,  
S/o C. Zaluia (L),  
R/o New Saiha, Saiha.

By Advocates :

Mr. N. Sailo, Sr. Advocate,  
Mrs. Dinari T. Azyu.

RESPONDENTS:

1. State of Mizoram, represented by  
the Chief Secretary to the Government of  
Mizoram, Aizawl.
2. Secretary to the Government of  
Mizoram, Health and Family Welfare  
Department, Aizawl.
3. Director of Health Services,  
Health and Family Welfare Department,  
Government of Mizoram, Aizawl.
4. Chief Medical Officer, Health and  
Family Welfare Department,  
Saiha District, Saiha.

5. Sh. N. Pahlira,  
Health Supervisor,  
Chhualung Main Centre,  
Saiha District.
6. Sh. L. Sahmo,  
Health Supervisor,  
Bukpui Main Centre,  
Kolasib District, Kolasib.
7. Sh. S. Beitia,  
Health Supervisor,  
Chhawngte,  
Lunglei District.
8. 8. Sh. T. Sailiana,  
Health Worker,  
Paithar Sub-  
Centre, Lawngtlai  
District, Mizoram.

By Advocates:

Mr. Aldrin Lallawmzuala, Addl.A.G., Mizoram,  
for respondent Nos. 1 to 4.

Mr. C. Lalramzauva, Sr. Advocate,

Mr. A.R. Malhotra,

Mr. K. Laldinliana,

Mr. Zoramchhana for respondent Nos. 5 to 7.

BEFORE  
HON'BLE MR. JUSTICE UJJAL BHUYAN

Date of hearing : 4.6.2013

Date of judgment and order : 7.6.2013

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. N. Sailo, learned senior counsel assisted by Mrs. Dinari T. Azyu,  
learned counsel for the petitioners and Mr. Aldrin Lallawmzuala, learned Addl.  
Advocate General, Mizoram for respondent Nos. 1 to 4. Also heard Mr. A.R.

Malhotra, learned counsel for respondent Nos. 5 to 7. None has appeared for respondent No. 8.

2. Petitioner No. 1 was initially appointed as Male Health Worker whereas petitioner Nos. 2 and 3 were appointed as Health Assistant under the Directorate of Health Services, Mizoram, in which posts they joined on 18.3.1980 and 23.3.1980 respectively. Subsequently, on recommendation of the Departmental Promotion Committee (DPC), their services were regularized with effect from their dates of joining. It may be mentioned that on a query by the Court while the case was being heard, State counsel has clarified that posts of Health Worker and Health Assistant is the same. Private respondents were appointed as Male Health Worker i.e. Health Worker (M) after the petitioners. Their particulars are as under:-

1. Respondent No. 5 - date of joining is 1.9.1980
2. Respondent No. 6 - date of joining is 13.2.1982
3. Respondent No. 7 - date of joining is 9.5.1980.

3. Respondent No. 3 i.e. Director of Health Services, Mizoram published the inter-se seniority list of Health Workers (M) on 5.12.2006. In the said seniority list, petitioners were placed at serial Nos. 55, 58 and 57 respectively whereas respondent Nos. 5, 6 and 7 were placed above the petitioners at serial Nos. 41, 52 and 48 respectively.

4. According to the petitioners, they were not aware of the said seniority list as copies of the same were not furnished to them. Moreover, they were posted in interior places and, therefore, they had no knowledge about the existence of

such seniority list. But when they came to know about it, petitioner No. 1 submitted representation on 19.11.2010 before the respondent No. 3 for correct assignment of his seniority position.

5. In the meanwhile, Annual Confidential Reports (ACRs) of six Health Workers were requisitioned by the respondent No. 3 to process for promotion to the next higher post of Health Supervisor. Three out of the six Health Workers whose ACRs were requisitioned, are junior to the petitioners. Aggrieved by the aforesaid, petitioner No. 3 on behalf of the petitioners submitted a representation dated 18.5.2011 before the respondent No. 3 to make necessary correction in the seniority list and, thereafter, to consider promotion to the post of Health Supervisor.

6. Without considering the representation of the petitioners, respondent No. 3 issued order dated 23.9.2011 promoting 41 nos. of Health Workers (M & F) to the post of Health Supervisor. The promotees included respondent Nos. 5, 6 and 7. The said promotion was made on the recommendation of the DPC held on 1.9.2011.

7. Aggrieved, petitioners submitted a joint representation on 28.9.2011 before the respondent No. 3 against the promotion order of the private respondents, who are junior to the petitioners.

8. State of Mizoram in exercise of powers conferred by the proviso to Article 309 of the Constitution of India has framed a set of Rules for regulating the method of recruitment to the post of Health Supervisor. It is called Mizoram Health and Family Welfare Department (Group 'B' Posts) Recruitment Rules,

2011. As per the aforesaid Recruitment Rules, the post of Health Supervisor is a selection post and the method of recruitment is 75% by promotion from Health Worker and 25% by limited departmental examination from amongst Health Workers, for both categories, the Health Worker should have at least 5 years of regular service in the grade.

9. Petitioners had earlier filed a writ petition before this Court against the erroneous assignment of seniority position to the private respondents above them and their consequential promotion to the next higher post of Health Supervisor. The said writ petition was registered as WP(C) No. 89/2011.

10. The Directorate of Health Services took note of the grievance of the petitioners and decided to look into it. A meeting was held in the office chamber of the Joint Director of Health Services on 19.10.2011. It was decided to redraw the seniority list by placing the petitioners at serial Nos. 52, 54 and 55 and the respondent Nos. 5, 6 and 7 at serial Nos. 113, 71 and 132. Petitioners were requested to withdraw the writ petition. Accordingly, WP(C) No. 89/2011 was disposed of by this Court on withdrawal by order dated 27.10.2011 with liberty to file a fresh case, if required.

11. State respondents thereafter decided to cancel the promotion of the private respondents. Accordingly, order dated 28.10.2011 was issued by the respondent No. 3 cancelling the promotion order of respondent Nos. 5, 6 and 7.

12. The said cancellation order dated 28.10.2011 was challenged by the respondent Nos. 5, 6 and 7 before this Court in WP(C) No. 102/2011.

13. In such circumstances, petitioners filed the present writ petition for quashing of the promotion order of respondent Nos. 5, 6 and 7 to the post of Health Supervisor dated 23.9.2011 and also to interfere with the seniority list dated 5.12.2006 by directing placement of the petitioners therein as per their correct seniority position.

14. State respondents have filed counter affidavit. Stand taken is that inter-se seniority lists of Health Workers were published from time to time, starting from the year 1991 onwards. Before issuing final seniority lists, provisional seniority lists were invariably published giving time to the incumbents to submit objections or representations if they had any grievance. Therefore, the contention of the petitioners that they were not furnished with a copy of the seniority list dated 5.12.2006 has been denied. Promotion of the Health Workers to the next higher post of Health Supervisor was done on the basis of the inter-se seniority list dated 5.12.2006.

15. Respondent Nos. 5 to 7 have also filed counter affidavit. According to the said respondents, if the prayer of the petitioners is accepted, a number of Health Workers placed above the petitioners and below them in the gradation list dated 5.12.2006 would be adversely affected as their seniority positions would be jeopardized. But all those Health Workers have not been arrayed as respondents in the present proceeding. Therefore, the writ petition is hit by non-joinder of necessary parties. The said respondents have also taken the plea of delay and laches on the part of the petitioners in filing the writ petition. It is contended that the seniority list dated 5.12.2006 has been challenged in the year 2012 after 6 years. Such belated challenge cannot be entertained as it will unsettle a settled

position. Respondent Nos. 5, 6 and 7 have also contended that petitioners did not submit any representation or objection when the provisional seniority list was circulated. Contending that cancellation of their promotion is illegal, the said respondents have stated that they had filed WP(C) No. 102/2011 challenging such cancellation and this Court had passed an interim order on 18.11.2011 suspending the cancellation order dated 28.10.2011.

16. Mr. N. Sailo, learned senior counsel for the petitioners while referring to the averments made in the writ petition has contended that the State respondents have admittedly made a mistake in placing the private respondents above the petitioners in the gradation list. He submits that it is clear from the record that the petitioners had joined as Health Worker much earlier than the private respondents and in the absence of any service rule governing the post of Health Worker, it is the length of service which is required to be counted for the purpose of determination of inter-se seniority. Since petitioners were serving in remote areas, they were not aware of such gradation list. As soon as they became aware of such gradation list, they submitted a representation before the authority but without considering their representation, private respondents were promoted instead of the petitioners to the post of Health Supervisor. He submits that technicality should not come in the way of justice as the petitioners have been deprived of their correct seniority position and consequently denied promotion to the next higher post.

17. Mr. Aldrin Lallawmzuala, learned State submits that there is no justification for such belated challenge to the seniority list made by the petitioners. If the petitioners' prayer is accepted, it will lead to a lot of

complications as settled seniority positions of a large number of Health Workers will be adversely affected. Since petitioners were sleeping over their rights, they are not entitled to the discretionary relief of the Court, he contends.

18. Submissions of learned senior counsel for the petitioners are vehemently resisted by Mr. A.R. Malhotra, learned counsel for the respondent Nos. 5, 6 and 7. He has raised the issue of non-joinder of necessary parties and contends that in the absence of necessary party, seniority list cannot be challenged. His further submission is that a seniority list cannot be challenged after a reasonable period, which according to him is about 3 or 4 years time. Additionally, he submits that petitioner Nos. 2 and 3 are Health Assistants. Since promotion to the post of Health Supervisor is from the post of Health Worker, therefore, their claim for promotion to the post of Health Supervisor cannot be accepted. He has placed reliance on the decisions of Hon'ble Supreme Court in the cases of Shiba Shankar Mohapatra and Others -vs- State of Orissa and Others reported in (2010) 12 SCC 471 and Vijay Kumar Kaul and Others -vs- Union of India and Others reported in (2012) 7 SCC 610.

19. In his reply, Mr. N. Sailo, learned senior counsel for the petitioners submits that the decisions relied upon by the learned counsel for the respondent Nos. 5 to 7 are not applicable to the facts of the present case. Decisions are to be read and understood in the contextual facts of that case. In this connection, he has placed reliance on the decisions of the Apex Court in the case of Bharat Petroleum Corpn. Ltd. and Another -vs- N.R. Vairamani and Another reported in (2004) 8 SC 579 and Sarva Shramik Sanghatana (KV), Mumbai -vs- State of Maharashtra and Others reported in (2008) 1 SCC 494.

20. Submissions made have been considered.

21. At the outset, as has already been noticed above, it may be mentioned that the cancellation of the promotion of the respondent Nos. 5, 6 and 7 dated 23.9.2011 was challenged by the said respondents before this Court in WP(C) No. 102/2011. It has been brought to the notice of the Court that the said writ petition was finally disposed of by order dated 29.8.2012, a true copy of which has also been placed before the Court. As per the said order, the cancellation order of the promotion of the respondent Nos. 5, 6 and 7 had been set aside and quashed by this Court on the ground that such cancellation was not preceded by any show cause notice and hearing. Accordingly, it was held that there was violation of the principles of natural justice and, therefore, the cancellation order was interfered with. This Court also observed that any order affecting the rights and interest of the parties, should be issued only by following the principles of natural justice.

22. It is thus clear that this Court did not adjudicate on the cancellation of the promotion order of respondent Nos. 5, 6 and 7 on merit. Such cancellation was set aside and quashed on the ground that it was in violation of the principles of natural justice as the cancellation was not preceded by any show cause notice and hearing.

23. In such circumstances, without expressing any opinion on merit, the Court is of the view that respondent No. 3 should now hear the petitioners, the private respondents of the present proceeding and any other person who may be affected by such decision of the authority and, thereafter, pass a fresh order in accordance with law regarding the inter-se seniority of the petitioners vis-à-vis

the respondents and others and promotion to the next higher post of Health Supervisor. The above exercise shall be carried out by the respondent No. 3 within a period of 4(four) months from the date of receipt of a certified copy of this order. Till the said period of 4 (four) months, the promotion of respondent Nos. 5, 6 and 7 to the post of Health Supervisor shall be treated as ad hoc promotion and would be subject to such order as may be passed by the respondent No. 3.

24. In view of the above order, deliberation on the case laws referred to by learned counsel for the parties is considered not necessary.

25. Writ petition is accordingly disposed of.

26. No cost.

JUDGE

Mahruaii