

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

W.P(C) No. 63 of 2011

Petitioners :

1. Smt. Rodinliani, Assistant Auditor,
Accounts & Treasuries Department.
2. Smt. K. Lalhmingmawii, Assistant
Auditor, Accounts & Treasuries
Department.
3. Sh. Samuel Ramdinmawia,
Assistant Auditor, Accounts & Treasuries
Department.
4. Smt. Lianthuami, Assistant Auditor,
Accounts & Treasuries Department.
5. Smt. R. Laltanpuii, Assistant
Auditor, Accounts & Treasuries
Department.
6. Smt. T. Zosangpuii, Assistant
Auditor, Accounts & Treasuries
Department.
7. Smt. P.C. Lalrindiki, Assistant
Auditor, Accounts & Treasuries
Department.
8. Sh. C. Lalchawimawii, Assistant
Auditor, Accounts & Treasuries
Department.
9. Smt. P.C Lalhmingmawia, Assistant
Auditor, Accounts & Treasuries
Department.
10. Sh. Ellis Hrangzawna Pachuau,
Assistant Auditor, Accounts & Treasuries
Department.
11. Sh. David Ramdinmawia, Assistant
Auditor, Accounts & Treasuries
Department.
12. Sh. Laldawngliana Kiangte,
Assistant Auditor, Accounts & Treasuries
Department.

13. Smt. Lulnunpuii, Assistant Auditor, Accounts & Treasuries Department.

14. Sh. John Lalliantluanga, Assistant Auditor, Accounts & Treasuries Department.

15. Smt. Lalbiaknungi Ralte, Assistant Auditor, Accounts & Treasuries Department.

16. Sh. Laldinliana Sailo, Assistant Auditor, Accounts & Treasuries Department.

17. Smt. P.C Lalchhuankimi, Assistant Auditor, Accounts & Treasuries Department.

18. Smt. T. Vanlalhruii, Assistant Auditor, Accounts & Treasuries Department.

19. Sh. Zosiamliana, Assistant Auditor, Accounts & Treasuries Department.

By Advocates :

Mr. C. Lalramzauva, Sr. Adv.
Mr. A. R. Malhotra, Adv.
Mr. T. J. Lalramtluanga, Adv.

Respondents :

1. The State of Mizoram, represented by the Chief Secretary to the Govt. of Mizoram, Aizawl.

2. The Secretary to the Government of Mizoram, DP & AR, (ARW) Aizawl, Mizoram.

3. The Secretary to the Govt. of Mizoram, Finance Department, Aizawl, Mizoram.

4. The Chief Controller of Accounts, Accounts & Treasuries, Govt. of Mizoram, Aizawl.

5. The Director, Accounts & Treasuries, Govt. of Mizoram, Aizawl, Mizoram.

6. Sh. Lalrinliana, Assistant Auditor (Contract), Office of the Chief Controller

of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

7. Sh. Vanlalhluma Chhakchhuak, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

8. Sh. Lalnunmawia, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

9. Sh. Chhingkhuma, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

10. Sh. F. Malsawmkima, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

11. Sh. C. Vanlalsiama, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

12. Smt. C. Laldingliani, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

13. Sh. C. Lalengzauva, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

14. Smt. Lalrinsangi, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

15. Sh. Jonathan C. Lalrintluanga, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

16. Sh. Vanlalhruaia, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

17. Sh. Darchhawntluanga, Assistant Auditor (Contract), Office of the Chief

Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

18. Smt. Barnadeth Lalmangaihtluangi, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

19. Sh. R. Lallawta, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

20. Sh. H. Lalhruitluanga, Assistant Auditor (Contract), Office of the Chief Controller of Accounts, Accounts and Treasuries, Mizoram, Aizawl.

By Advocates :

Mr . Aldrin Lallawmzuala, Addl. A.G,
Mr. M. Zothankhuma, Sr. Adv.

B E F O R E
THE HON'BLE MR. JUSTICE UJJAL BHUYAN.

Date of hearing : 19th June, 2012.

Date of Judgment : 5th July, 2012.

J U D G M E N T A N D O R D E R

This is an application under Article 226 of the Constitution of India filed by 19 petitioners, who are serving as Assistant Auditors on contract basis in the Accounts and Treasuries Department, Govt. of Mizoram, seeking regularization of their services. They are also aggrieved by the decision of the official respondents to consider their eligibility for regularization with effect from the date of recommendation by the Departmental Promotion Committee (DPC) and by the consequential action of placing them

below the private respondents in the list of contractual employees prepared for the purpose of regularization.

2. The case of the petitioners is that they were appointed as Assistant Auditors in the Accounts and Treasuries Department, Govt. of Mizoram on contract basis on various dates during the period 2001 to 2006. The petitioner No. 1 was so appointed on 1/11/2001 where as the petitioner No. 19 was appointed on 1-2-2006. Such contractual appointments were made with the approval of the Finance Department as well as the Department of Personnel and Administrative Reforms. Since their initial appointments, their contractual services have been continued by the Government till date.

3. From time to time the Directorate of Accounts and Treasuries submitted proposals before the Government for filling up the vacant posts of Assistant Auditor by regularizing the services of the Assistant Auditors appointed on contract basis like the petitioners. Such proposals were forwarded in view of the increasing workload and the availability of sufficient number of vacancies. However, the proposals were not accepted by the Government.

4. The State framed a scheme called "The Government of Mizoram Regularization of Contract Employees Scheme, 2008" on 6-8-2008 for the purpose of regularization of the services of the contractual employees. However, soon thereafter, the aforesaid scheme was superseded by another scheme having the same name

i.e. "The Government of Mizoram Regularisation of Contract Employees Scheme, 2008" which was notified vide notification dated 10-10-2008, the salient features of which would be discussed in the later part of the judgment. However, it may be briefly mentioned at this stage that the above scheme would cover those contractual employees who were appointed through DPC with the prior approval of the Department of Personnel and Administrative Reforms and the Finance Department. Additionally, the cases of those contractual employees appointed before 06-12-2005 on recommendation of DPC with concurrence of Finance Department only and whose services are still being continued would also be covered by the above scheme. A crucial difference seen in the subsequent scheme vis-à-vis the earlier scheme is that under the earlier superseded scheme those contractual employees appointed prior to 6.12.2005 with the concurrence of the Finance Department only without any DPC recommendation were also eligible for regularisation. This has been omitted in the subsequent scheme.

5. Subsequent proposals for regularization of the contractual appointments of the petitioners were turned down by the Government on the ground that they did not fulfill the required eligibility criteria under the Government of Mizoram Regularization of Contract Employees Scheme, 2008 (Regularization Scheme) inasmuch as they were appointed without recommendation of DPC.

6. However, it was subsequently decided by the Government that a Special DPC should be constituted to examine and screen those contractual employees who were so appointed without recommendation of DPC to judge their suitability for continued engagement on contract basis and to bring them within the ambit of the Regularisation Scheme.

7. At this stage it may be noted that while the petitioners were engaged on contract basis from 2001 to 2006 without recommendation of the DPC, the private respondents i.e. respondents 6 to 20 were engaged on contract basis much later from 2007 onwards but on recommendation of DPC.

8. A special examination was accordingly conducted on 2-9-2010 and 3-9-2010 for the petitioners and other similarly placed contractual employees. The petitioners appeared in the said examination, the results of which were placed before the DPC. The DPC in its meeting held on 08-10-2010, on scrutiny of the examination results, recommended the petitioners for appointment on contract basis. The Government approved the recommendation of the DPC on 22-11-2010.

9. On such recommendation of DPC, fresh appointment orders were issued to the petitioners engaging them as Assistant Auditors on contract basis.

10. A meeting was held on 15-04-2011 between the Finance Department, Law and Judicial Department and the Labour and Employment Department. In the said meeting, it was decided

to prepare a seniority list of the contractual employees for the purpose of regularization. For placement in the seniority list it was decided that the seniority of the contract employees who were so appointed initially without recommendation of the DPC shall be counted with effect from the date of the DPC recommendation. Accordingly, the Accounts and Treasuries Department prepared a provisional seniority list of contract employees on 20-06-2011 based on the aforesaid criteria. In the said seniority list, the petitioners have been placed below the private respondents. Whereas the private respondents 6 to 20 have been placed at Sl. Nos. 1 to 4 and 6 to 16, the petitioners have been placed at Sl. Nos. 17 to 35 in that list.

11. Aggrieved, the petitioners have filed the present writ petition seeking the reliefs as indicated above.

12. This Court by order dated 21-07-2011 while issuing notice, had directed as an interim measure that there shall be no finalization of the seniority list of Assistant Auditors(contractual) till the disposal of this Case.

13. The State has filed its counter affidavit whereby it has justified the impugned decision contending that the same is in terms of the Regularization Scheme. The State has contended that the petitioners were otherwise not eligible for regularization as their contractual appointments were not made on the basis of any selection or DPC recommendation. Taking a humanitarian approach to bring them under the ambit of the Regularization

Scheme, the Government conducted a special examination for the petitioners following which they have been recommended by the DPC for contractual appointment.

14. The private respondents have also filed their counter affidavit wherein they have contended that the initial contractual appointments of the petitioners were on the basis of pick and choose method as they were not subjected to any kind of interview or selection process. As they were not recommended by the DPC they were not entitled to regularization in terms of the Regularisation Scheme. Since they have only now been recommended by the DPC for contractual appointment, their contractual service should, therefore, be counted from the date of such recommendation and as the contractual appointments of the private respondents based on DPC recommendation were earlier in point of time than the petitioners, they have rightly been placed above the petitioners in the seniority list.

15. Heard Mr. C. Lalramzauva, learned Sr. counsel for the petitioners. Also heard Mr. Aldrin Lallawmzuala, learned Addl. Advocate General, Mizoram appearing for respondent Nos. 1 to 5. Private respondents 6 to 20 are represented by Mr. M. Zothankhuma, learned Sr. counsel.

16. Mr. Lalramzauva, learned Sr. counsel for the petitioners submits that the subsequent examination of the petitioners and recommendation by the DPC was only for the purpose of removing the deficiency in the contractual appointments of the petitioners so as to bring them within the ambit of the Regularization Scheme,

which was framed after their appointments. He contends that the past contractual service rendered by the petitioners cannot be overlooked for the purpose of regularization. As the contractual appointments of the private respondents were much after such appointments of the petitioners, their cases for regularization cannot be considered ahead to the petitioners. He also makes a grievance on the supercession of the earlier regularization scheme under which the petitioners were eligible for regularisation as being done deliberately to deny the benefits of regularisation to the petitioners. He further submits that contractual service of similarly placed Post Graduate Teachers of Higher Secondary Schools in the State have been regularized and contends that similar treatment should also be extended to the petitioners, otherwise the action of the State respondents would be discriminatory and arbitrary.

17. Learned Additional Advocate General submits that the initial contractual appointments of the petitioners were made without consulting the parent department and without holding any recruitment test. As the petitioners did not come within the ambit of the Regularisation Scheme, the Government took a considered view of the matter and decided to hold a special examination for the petitioners to enable recommendation by the DPC for continuation of their contractual employment. Similar is the submission made by Mr. M. Zothankhuma, learned Sr. counsel for the private respondents, who additionally submits that the petitioners cannot claim that their past contractual service which were without any Selection and DPC recommendation should be

counted for the purpose of regularization under the Regularisation Scheme.

18. The submissions made have been considered.

19. To consider the rival submissions, a brief scrutiny of the Regularisation Scheme is considered necessary. As per Clause-3, the Scheme applies to those contractual employees who were so engaged on the recommendation of the DPC with the prior approval of the Finance Department as well as the Personnel and Administrative Reforms Department. An exception is made in the case of those contractual employees who were recommended by the DPC with the prior concurrence of the Finance Department only subject to the condition that they were so appointed prior to 6-12-2005 and their services are still retained. Under Clause-4, 20% of the vacant posts under the direct recruitment quota would be filled up through regularization of contractual employees under the Regularization Scheme. As per Clause-4(3), any person in contractual engagement continuously for more than 5 years would be eligible for regularization against the existing post. Such regularization would, however, be subject to the following conditions:

- (1) The initial engagement was on recommendation of DPC;
- (2) The contract employee possesses the required educational and other qualifications as prescribed in the Recruitment Rules;
- (3) For such regularization, the length of service in contractual employment shall be considered; and

(4) Regularisation would be subject to satisfactory performance report for the last five years.

20. It is the first condition noted above which has been held out against the petitioners. As has already been noticed above, the petitioners were appointed on contract basis during the period from 2001 to 2006 on approval of the Finance department and the Personnel and Administrative Reforms Department but without recommendation of DPC. Their contractual appointments have continued till date. Only on 08-10-2010 they were recommended by the DPC after they had successfully appeared in the special examination. On the other hand, the private respondents were appointed on contract basis much after the petitioners from 2008 onwards though they were recommended by the DPC.

21. Both the two groups i.e. the petitioners and the private respondents are yet to enter regular service. They are outside the cadre, serving on contract basis. The Government has taken a policy decision by way of framing the Regularisation Scheme to regularize the services of the contractual employees by providing that 20% of the vacancies earmarked for direct recruitment should be filled up by regularizing the services of the contract employees. For the purpose of regularization, recommendation of DPC even for the contractual appointment has been made mandatory. Admittedly, when the petitioners were initially appointed on contract basis, there were no DPC recommendations in their favour.

22. The question, therefore, arises as to whether the period of contractual service of the petitioners prior to their DPC recommendation should be counted for the purpose of their regularization or the said period would stand obliterated altogether.

23. To answer this question, one has to look at the Regularisation Scheme in a pragmatic manner. When the petitioners were initially appointed on contract basis, the Regularisation Scheme was not in existence. It was framed much later, that too by superceding another scheme which made an exception for the contractual employees appointed prior to 6.12.2005 from having DPC recommendation, making it mandatory to have DPC recommendation even for contractual appointment. As the petitioners did not have DPC recommendation, to overcome such deficiency, a special examination was conducted for the petitioners and other similarly situated contractual employees following which they were recommended by the DPC for their continued engagement on contract basis. The purpose behind holding this special examination was to judge the suitability of the petitioners and the others to continue their contractual engagements. This special examination was only for this limited purpose and cannot be stretched to contend that only the post DPC recommendation contractual service of the petitioners would be valid.

24. The above exercise was carried out only for the purpose of preparing a panel list of contractual appointees so that

regularization can be done in a fair, orderly and systematic manner, leaving no room for any future discontentment. It is not a case of preparation of a seniority list of those who are already in the cadre.

25. Considering the above, the decision of the State respondents to exclude the period of contractual engagement of the petitioners prior to recommendation of the DPC and consequently placing them below respondents Nos. 6 to 20 in the panel list is not justified. The said period of contractual service of the petitioners cannot be ignored and should be taken into consideration while calculating the length of their contractual service.

26. Accordingly, the impugned panel list dated 20-06-2011 is hereby set aside. The State respondents would now prepare a fresh panel list of the contractual employees serving as Assistant Auditors by placing the petitioners above the respondent Nos. 6 to 20 and thereafter to consider their cases for regularization in terms of the Regularisation Scheme.

27. Writ petition stands allowed.

28. No cost.

JUDGE

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