

GAHC030000352019



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

Case No. : WP(C)/16/2019

Melony Zoremsangi
Mualpui, Aizawl

VERSUS

The State of Mizoram and 3 Ors
Aizawl2:The Commissioner/ Secretary to the Govt. of Mizoram
Irrigation and Water Resources Deptt
Aizawl

3:The Seretary to the Govt. of Mizoram
Finance Deptt. Aizawl

4:The Chief Engineer
Irrigation and Water Resources Deptt. Govt. Mizoram
Aizaw

Advocate for the Petitioner : Mr Anil Rinliana Malhotra

Advocate for the Respondent : Mrs. H Lalmalsawmi (Addl. AG/GA, Mizoram)

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

JUDGEMENT

Date : 24.11.2021

Heard Mr. A.R Malhotra, learned counsel for the writ petitioner and Mrs. H. Lalmalsawmi, learned Government Advocate appearing for the respondents.

[2.] The short controversy involved in the present writ petition is as to whether the petitioner can be granted 2 (two) service increments as per the incentive provided under Rule 29 of the Mizoram Engineering Service Rules, 2013 (Service Rules of 2013), as she had obtained the Degree of Master of Technology in Irrigation Water Management from the Indian Institute of Technology, Roorkee on 14.11.2009.

[3.] Facts of the case in brief is that the petitioner after obtaining a Degree of Bachelor of Technology in Agricultural Engineering in the year 2002, obtained the aforesaid Master Degree on 14th November, 2009. Thereafter, on being recommended by the Mizoram Public Service Commission (MPSC), she was appointed as an Asst. Engineer under the Minor Irrigation Department vide Notification dated 26.09.2011 (Annexure-3). The Service Rules of 2013 was notified in the Mizoram Gazette on 23.09.2013 on which date, it came into force and apart from other Departments, the Minor Irrigation Department came to be governed by the same. Rule 29 provides that the member of the service who obtained higher technical educational qualification than the prescribed qualification for direct recruitment under Rule 11(a) shall be given incentives. For the purpose of the present writ petition, the petitioner being a Post Graduate, the incentive would be 2 (two) increments.

[4.] The petitioner therefore submitted her representation to the respondent No. 4 on 22.04.2014 (Annexure-5) along with her 2 (two) other colleagues, asking for the increments which is due to them according to the service rules. Their representation was then forwarded by respondent No. 4 to the respondent No. 2 vide Communication dated 29.04.2014 (Annexure-6). In the meantime, vide Notification dated 28.11.2014 (Annexure-7) the petitioner was confirmed against her appointed post upon completing the probationary

period and on the basis of her Performance Appraisal Report (APR). The representation of the petitioner and her 2 (two) colleagues however came to be rejected by the respondent authorities concerned and the same was communicated to the respondent No. 4 by the Under Secretary to the Govt. of Mizoram, Minor Irrigation Department vide her Communication dated 16.06.2015 (Annexure-A) stating that the proposal for granting incentive to the Engineers concerned was regretted by the Finance Department since they acquired their higher qualifications before the Service Rules of 2013 was made applicable to them. The said communication is being abstracted hereunder for ready perusal:-

“No. A. 22011/1/07-MI

GOVERNMENT OF MIZORAM

MINOR IRRIGATION DEPARTMENT

Dated Aizawl the 16th June, 2015

To,

The Chief Engineer

Minor Irrigation Department

Govt. of Mizoram

Subj:- Incentive to MES in respect of higher technical education.

Ref:- Your No. G. 12013/2/2011-CE(MI) Dt. 17.09.2014

Sir,

In inviting a reference to the above, I am directed to convey Finance Department observation

as follows:

“Minor Irrigation Department is informed that the proposal for granting of incentive to 3 (three) Engineers is regretted since they have acquired higher qualification before the ‘Mizoram Engineering Service Rules, 2013’ was made applicable to them”

Yours faithfully

(LALREMPUIA FANAI)

Under Secretary to the Govt. of Mizoram

Minor Irrigation Department”

Aggrieved with the above rejection, the petitioner is before this Court.

[5.] Mr. A.R Malhotra, learned counsel by referring to Rule 2 of the Service Rules of 2013 submits that the same has been made applicable to all persons appointed to the service either before or after promulgation of the rules in the Departments mentioned which includes the Minor Irrigation Department at Rule 2(d). By further referring to Rule 29, the learned counsel submits that there is no particular criteria for availing the incentives provided therein. If one has a higher educational qualification other than the prescribed qualification for direct recruitment, he or she is to be given the benefit of the incentives as provided. In other words, the higher technical educational qualification may either be obtained prior to entry into the service or during service and that no distinction has been drawn. He, therefore, submits that the petitioner is entitled to be given 2 (two) service increments as per Rule 29 of the Service Rules of 2013.

[6.] The learned counsel further submits that in a similar situation, an Asst. Engineer under the Public Health Engineering Department, who was appointed vide Notification dated 28.02.2012 in the said post has been given 2 (two) year increments in terms of the incentives provided under Rule 29 of the Service Rules of 2013 vide Notification dated 21.07.2015. In support of his submission, the learned counsel refers to the affidavit-in-reply filed by the petitioner on 04.12.2019 at Annexure-R2 & R3 respectively. He also submits that although the said Asst. Engineer obtained her Mater Degrees prior to entering into Government service, the incentives nevertheless was granted to her. He submits that the petitioner is also similarly situated and therefore she cannot be deprived of similar benefit otherwise it would amount to gross discrimination and violation of her Constitutional rights.

[7.] The learned counsel further submits that as per the stand taken by the State respondents in their counter affidavit, payment of incentives can be given only after acquiring higher qualification after induction into service in terms of Govt. of India's Order 16(iv) under FR-27. In this connection he submits that not only the Service Rules of 2013 provide for grant of incentives but importantly, it is also not the ground for refusing to grant her the increments as was communicated to the respondent No. 4 by the Under Secretary to the Govt. of Mizoram, Minor Irrigation Department on 16.06.2015. He submits that the ground for refusing to grant the petitioner the incentive was that she acquired the higher educational qualification prior to being governed by the Service Rules of 2013. The same is however not sustainable in view of Rule 2 of the Service Rules of 2013. He also submits that the validity of the order passed by the authority has to be judged by the reasons mentioned therein and the same cannot be supplemented by giving fresh reasons in the shape of an affidavit. If the same is permitted the order which may be bad in the beginning may get validated later on through the fresh grounds made in the affidavit. In this connection, the learned counsel relies upon the Apex Court decision in *Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi &*

Ors., reported in (1978) 1 SCC 405. The learned counsel thus submits that under the circumstance the impugned Communication dated 16.06.2015 may be set aside and the petitioner may be granted the increment due to her in terms of the Service Rules of 2013.

[8.] Mrs. H. Lalmalsawmi learned Government Advocate, on the other hand, submits that not only is the petitioner not eligible to be given the incentives in view of the provisions of the FR-27 but also due to the fact that the petitioner was appointed in the year 2011 under the relevant service recruitment rules of the Minor Irrigation Department. It was only with the publication of the Service Rules of 2013 that those working under the Minor Irrigation Department came to be governed by the Service Rules of 2013. Therefore, the petitioner having obtained Degree in 2011 when she was not a member of the service, governed by the Service Rules of 2013, there is no question of granting her the increments. She therefore submits that under the circumstance, the petitioner cannot have any legitimate grievance and the writ petition should be dismissed.

[9.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[10.] From the above narration, the facts broadly are not disputed. The petitioner acquired her Bachelors' Degree in Agricultural Engineering in the year 2002 and her Master Degree in Irrigation Water Management on 14.11.2009. She entered into Government service as Assistant Engineer on being appointed vide Notification dated 26.09.2011 and she was confirmed against her appointed post vide Notification dated 28.11.2014 with immediate effect. Rule 29 of Service Rules of 2013 provides as follows:-

“29. Incentive to the members : *The member of the service who obtained higher technical educational qualification than the prescribed qualification for direct recruitment under Clause(a) of*

Rule 11 shall be given incentives as follows:

- (i) Post Graduate Diploma – 1 increment*
- (ii) Post Graduate Degree – 2 increments*
- (iii) Doctorate Degree – 3 increments*

Provided that the advance increment(s) shall not affect the inter-se-seniority of the members of the service.”

[11.] From the above abstract, it may be seen that members of the service who have obtained higher technical educational qualification other than those prescribed qualification for direct recruitment under Rule 11(a) can be given increments. There is no stipulation as to whether such higher educational qualification should be obtained prior to entry into service or while in service. In respect of a person acquiring Post Graduate Degree, 2 (two) increments are to be given. The petitioner in the present case had acquired Master Degree on 14.11.2009 prior to her entry into the Government service. Rule 2 of the Service Rules of 2013 may also be abstracted below for ready perusal –

“2. Scope and Applicability: *These Rules shall be applicable to all persons appointed to the service either before or after promulgation of these rules in–*

- (a) the Public Works Department;*
- (b) the Public Health Engineering Department;*
- (c) the Power and Electricity Department;*
- (d) the Minor Irrigation Department.*
- (e) Any other Department as the Government may consider appropriate from time to time.”*

[12.] From the above abstract it may be seen that Rule 2 provides that the rules shall be applicable to all persons appointed to the service either before or after promulgating the rules. Although, the petitioner may not have been appointed under the Service Rules of 2013 but in view of Rule 2 of the Rules of 2013, the Service Rules of 2013 has been made applicable to the petitioner. If such is the case, the incentives as provided under Rule 29 in my considered opinion cannot be denied to her.

[13.] One aspect of the matter which has been noticed by this Court is that, incentives have been granted to those persons acquiring higher educational qualification not only in terms of the Service Rules of 2013 but there was a similar provision in the earlier service rules i.e. The Mizoram Engineering Service Rules, 2001. However, the Finance Department, Govt. of Mizoram brought out an Office Memorandum on 30.04.2004 placing certain restrictions on the grant of incentives to the employees under the State Government for obtaining higher educational qualification. The said Office Memorandum came to be challenged in WP(C) No. 125/2013. The writ petition was disposed of by Judgment & Order dated 22.09.2014 by setting aside the Office Memorandum dated 30.04.2004. Surprisingly, despite the same having been set aside, the State respondents in the Mizoram Engineering Service (Amendment) Rules, 2017, while amending Rule 29 of the Service Rules of 2013 have again incorporated the Office Memorandum dated 30.04.2004 and has made the same applicable for grant of incentives to members of the service. It is stated at the bar that the State Government has not preferred any appeal against the Judgment & Order dated 22.09.2014 passed in WP(C) No. 125/2013 and therefore, it is not understood as to why the said Office Memorandum dated 30.04.2004 has been still made applicable and incorporated in the amendment of Service Rules of 2013 which is as recent as 30.11.2017, when the Mizoram Engineering Service (Amendment) Rules, 2017 was notified in the Mizoram Gazette. Be that as it may, the right already acquired by the petitioner in terms of the Service Rules of 2013 cannot be taken away by the amendment made in 2017. Moreover, as pointed out by

the counsel for the petitioner, the State Government in the Public Health Engineering Department had given the increment benefit to another Asst. Engineering who admittedly is similarly placed as the present petitioner. Therefore, the petitioner in my considered opinion cannot be deprived of a similar benefit.

[14.] In the result, I find merit in the petition. The respondents are directed to grant the petitioner the benefit of service increments in terms of Rule 29 of the Service Rules of 2013. The same should be done within a period of 2 (two) months from the date of receipt of a certified copy of this order.

JUDGE

Comparing Assistant