

W.P.(C) No. 79 of 2015,  
W.P.(C) No. 68 of 2015  
&  
W.P.(C) No. 85 of 2015

B E F O R E  
THE HON'BLE MR.JUSTICE MICHAEL ZOTHANKHUMA

1.10.2015  
*(Tuesday)*

Heard Mr. N.Sailo, learned senior counsel assisted by Mrs. Dinari T. Azyu, counsel for the petitioners. Also heard Mr. Aldrin Lallawmzuala, Addl. Advocate General, Mizoram and Ms. Melody L. Pachuau, learned Govt. Advocate for the State respondents.

2. The 3 (three) writ petitions are being taken up together and being disposed of by a common order.

3. The petitioners in W.P.(C) No. 79 of 2015 were appointed through duly constituted Departmental Promotion Committee (DPC) and was appointed as UDC on contract basis in the year 2009. The petitioners were thereafter regularized to the post of UDC vide Orders dated 25.8.2014 and 5.11.2014 as per the "Govt. of Mizoram Regularization of Contract Employees Scheme, 2008". The petitioners were regularized w.e.f. the date of the regularization orders.

4. The petitioners in W.P.(C) No. 68 of 2015 were appointed as Junior Engineer (J.E.) on contract basis in the year 2007 and they were regularized by Order dated 20.7.2012 as per the "Govt. of Mizoram Regularization of Contract Employees Scheme, 2008". The petitioners were regularized w.e.f. the date of the regularization orders.

5. The petitioners in W.P.(C) No. 85 of 2015 were appointed as Junior Engineer (J.E.) in the Public Works Department (PWD) on contract basis in the year 2008 and they were regularized in the said post on 26.8.2014 and 20.11.2014 as per the "Govt. of Mizoram Regularization of Contract Employees Scheme, 2008". The petitioners were regularized w.e.f. the date of the regularization orders.

6. The petitioners counsel submits that the State Government had formulated a Scheme called "the Government of Mizoram Regularisation of Contract Employees Scheme, 2008," which came into force with effect from 10.10.2008. This Govt. of Mizoram Regularisation of Contract Employees Scheme, 2008, herein after referred to as the 2008 Regulation Scheme was made in exercise of the powers conferred by the proviso of the Article 309 of the Constitution. Para 7 of the 2008 Regulation Scheme is as follows :

***"Counting of past service on regularization.***

*On regularization past services rendered as continuous Contract employee shall be counted as qualifying service for leave and pensionary benefits only."*

The petitioners counsel submits that the Governor of Mizoram was pleased to notify the New Defined Contributory Pension Scheme, 2010 and the same came into force on 1<sup>st</sup> September, 2010. The Mizoram New Defined Contributory Pension Scheme, 2010, herein after referred to as the 2010 Pension Scheme came into force on 1.9.2010 and was to apply to the Government servant appointed on regular basis with effect from 1.9.2010 onwards to Civil Services and posts in connection with the affairs of the State which are borne on pensionable establishments.

The petitioners counsel submits that at the time of regularization of the petitioners as government servant under the 2008 Regulation Scheme, the regularization Orders of the petitioners stated that the petitioners past services rendered as continuous contractual employees would be counted as qualifying service for the purpose of leave only. Thereafter, the respondents by allotting Permanent Retirement Account Number (PRAN) for contribution under the 2010 Pension Scheme, the petitioners have been denied the counting of their service for the purpose of seniority and pensionary benefits.

7. The petitioners counsel submits that the petitioners should be governed by the CCS Pension Rules, 1972 and not under the 2010 Pension Scheme inasmuch as the petitioners past service rendered continuously as contract employees should also be counted for the purpose of pensionary benefits as laid down in para 7 of the 2008 Regulation Scheme. The petitioners counsel submits that the petitioners have a right to have their past services prior to the promulgation of the 2010 pension scheme to be counted for the purpose of pension. The petitioners counsel submits that as the pension scheme applicable prior to the 2010 Pension Scheme was the CCS Pension Rules, 1972, the period of service of the petitioners on contractual basis prior to the 2010 Pension Scheme has to be counted under the CCS Pension Rules, 1972. As such, the CCS Pension Rules, 1972 should be made applicable to the petitioners.

The extract of the 2010 Pension Scheme is reproduced below :-

**" 1. Short title and commencement**

*This scheme may be called the Mizoram New Defined Contributory Pension Scheme, 2010.*

*It shall come into force on the 1<sup>st</sup> September, 2010.*

## **2. Application**

**2.1** *Tier-I of this scheme shall apply only to the Government servants appointed on regular basis with effect from 1.9.2010 onwards to civil services and posts in connection with the affairs of the State which are borne on pensionable establishments, but shall not apply to:-*

- a) Persons in casual and daily-rated employment.*
- b) Persons paid from contingencies.*
- c) Persons entitled to the benefit of a Contributory Provident Fund.*
- d) Members of All India Services.*
- e) Persons employed on contract basis.*
- f) Persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law or specific scheme for the time being in force.”*

8. The counsel for the petitioners has also submitted that as per para 2.1 of the 2010 Pension Scheme, Tier-I of the Pension Scheme is not applicable to persons employed on contract basis. The petitioners counsel also submits that in the 2010 Pension Scheme, there are only 2 (two) types of pensions, i.e. Tier-I & II. The petitioners counsel submits that Tier-II not being introduced till date and Tier-I not being applicable to the petitioners as per para 2.1 of the 2010 Pension Scheme, the 2010 Pension Scheme cannot be made applicable to the petitioners.

9. The petitioners counsel also submits that the Secretary to the Govt. of Mizoram, Finance Department had issued notification dated 27.2.2012 by which para 2.1 of the 2010 Pension Scheme was modified and which stated that Tier-I shall include all Muster Roll/contract/ad-hoc/officiating/casual employees whose services were regularized on or after 1.9.2010. The petitioners counsel submits that this notification dated 27.2.2012 modifying para 2.1 of the 2010 Pension Scheme was set aside and quashed by this Court vide Judgment & Order dated 28.5.2014 passed in W.P.(C) No. 25 of 2013 (Sh.Lalparliana Sailo & 40 Others –versus- State of Mizoram & 5 Others).

The petitioners counsel also submits that the present case is covered by the Judgments of this Court in W.P.(C) No. 25 of 2013 (Sh.Lalparliana Sailo & 40 Others –versus- State of Mizoram & 5 others), W.P.(C) No. 93 of 2014 ( Sh.Lalhmingliana & 209 others –versus- State of Mizoram & 5 others), W.P.(C) No. 102 OF 2014 ( Sh. H.Laldingngheta & 46 others –versus- State of Mizoram & 4 others), W.P.(C) No. 8 of 2015 (Smt. Hmingthaluri & 26 others –versus- State of Mizoram & 5 others) and W.P.(C) No. 12 of 2015 (Smt. Vanlalhriati & 14 others –versus- State of Mizoram & 5 others).

10. Mr. Aldrin Lallawmzuala, learned Additional Advocate General, Mizoram submits that the 2010 Pension Scheme cannot be made applicable to the petitioners inasmuch as the Govt. of Mizoram has subsequently issued a notification dated 27.2.2015, by which the Governor of Mizoram was pleased to promulgate the Mizoram New Defined Contributory Pension (1<sup>st</sup> amendment) Scheme, 2015, herein after referred to as the 2015 Amendment Scheme. The Addl. Advocate General submits that as per the 2015 Amendment Scheme, *Tier-I of this Scheme shall apply only to the Government servants appointed on regular basis with*

*effect from 1.9.2010 onwards/regularized on or after 1.9.2010 to Civil Services and posts in connection with the affairs of the State which are borne on pensionable establishments, but shall not apply to :*

- a) Persons in casual and daily-rated employment who are not regularized*
- b) Persons paid from contingencies who are not regularized*
- e) Persons employed on contract basis who are not regularized.*
- f) Persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law or specific scheme for the time being in force who are not regularized."*

The Addl. Advocate General also submits that as per the amended para 5 given in the 2015 Amendment Scheme, the petitioners are not eligible to be governed by the 2010 Pension Scheme as the Amendment of para 5 is as follows :-

*"For clauses (4) & (6) of Para 5 of the Principal Scheme, the following shall be substituted, namely:*

*"4) Government servants joining the service / regularized on or after 1.9.2010 shall not subscribe to the General Provident Fund and shall rather join this New Defined Contributory Pension Scheme automatically.*

6) *Immediately on joining the Government service / regularization, the Government servant shall be required to provide particulars such as his name, designation, scale of pay and Grade Pay, date of birth, nominee(s) for the fund, relationship of the nominee, etc. in the prescribed form (Annexure-I). The Drawing and Disbursing Officer concerned shall be responsible for obtaining this information from all Government servants covered under this new pension scheme and shall submit the consolidated information for all those who have joined service/regularized during the month in the prescribed format. (Annexure-II) to the CCA who shall cause to allot Permanent Retirement Account Numbers (PRAN) to the Government servants concerned”.*

The Addl. Advocate General submits that the petitioners not having challenged the 2015 Amendment Scheme, the petitioners are to be governed by the 2010 Pension Scheme and the 2015 Amendment Scheme.

11. Mr. Nelson Sailo, senior counsel appearing for the petitioners has submitted that the 2015 Amendment Scheme cannot be made applicable to the petitioners as the petitioners were regularized prior to the 2015 Amendment Scheme coming into force. The senior counsel submits that the 2015 Amendment Scheme cannot have retrospective operation and can only be applied prospectively.

Mr. Nelson Sailo, senior counsel for the petitioners also submits that the petitioners service for the purpose of seniority should be counted from the date they were appointed as contract employees in view of the Judgment passed by the Division Bench of this Court in W.A. No. 244 of

2012 ( Sh.Lalrinliana & 12 Others –versus- State of Mizoram & Others). The petitioners counsel submits that the 2008 Regulation Scheme also requires the respondents to count the past services rendered by the petitioners as continuous contractual employees for the purpose of seniority.

12. Mr. Nelson Sailo has also submitted that the Division Bench of this Court in W.A. No. 244/2012 has held that the petitioners who were appointed in accordance with recognized method of recruitment and appointed as contractual employees would be entitled to count their services as contractual employees for the purpose of seniority on their regularization. The petitioners counsel has submitted that in view of the Judgment passed in W.A No. 244 of 2012, the petitioners are entitled to have their services governed under the CCS Pension Rules, 1972 and to count their services during their contractual period for the purpose of seniority. Thus, the petitioners counsel prays that a direction should be issued directing the respondents to govern the services of the petitioners under the CCS Pension Rules, 1972, in view of para 7 of the 2008 Regulation Scheme and to count their past service rendered on contract basis for the purpose of seniority.

13. I have heard the counsels for the parties.

The 2 (two) points that have to be decided by this Court are as follows:

1. Whether the petitioners who were contract employees and who were regularized after the 2010 Pension Scheme came into force would be governed by the 2010 Pension Scheme or the CCS Pension Rules, 1972.



2. Whether the service of the petitioners during their contract period should be counted for the purpose of seniority.

14. The second point is taken up first, i.e. whether the service of the petitioners during their contract period should be counted for the purpose of seniority.

W.A No. 244 of 2012 was with regard to a dispute between 2 (two) groups of contractual employees with regard to seniority. The dispute was due to the process of regularization of contract employees started by the State respondents. One of the factors to be considered for regularization was the seniority of the candidates who were working on contract basis. The Division Bench by this Court in W.A. No. 244 of 2012 had held that the contractual employees who had been appointed after having been appointed in accordance with the recognized method of recruitment consisting with Article 14 & 16 of the Constitution of India would be entitled to count their contractual service for the purpose of seniority ahead of those contractual employees who were appointed without following the recognized method of recruitment. Also the petitioners have not been able to show why and how their service under contract basis should be counted for the purpose of seniority when their regularization is made from a certain date. The petitioners have also not been able to show that their past service as contract employees has been regularized. Accordingly, their seniority cannot be counted from the date of appointment on contract basis. The fact situation is different in this case vis-à-vis W.A. No. 244 of 2012. There are other cases to be considered. For example, a dispute may arise in the future as to the placement in the seniority list with regard to the petitioners and persons who were appointed on regular basis prior to the petitioners' regularizations. However, as no rights of the petitioners have been

violated till date, in view of there being no seniority list being published by the State respondents, the petitioners prayer cannot be allowed.

15. With regard to the question whether the petitioners are entitled to be governed by the CCS Pension Rules, 1972 or the 2010 Scheme, it would be fruitful to examine para 7 of the 2008 Regulation Scheme. Para 7 of the 2008 is reproduced below again:

***"Counting of past service on regularization.***

*On regularization past services rendered as continuous Contract employee shall be counted as qualifying service for leave and pensionary benefits only."*

16. A perusal of the same, in my view, clearly goes to show that the rights of the petitioners to count their past services rendered while on contract employment would have to be in accordance with the Pension Rule/Scheme applicable at the time of regularization of the contractual employees. It is submitted at the Bar that at the time of petitioners services rendered on contract basis, the petitioners were not governed by the CCS Pension Rules, 1972 or the 2010 Scheme, as the said post on contract basis was not a pensionable post. The rights of the petitioners to receive pension has come into play only at the time the contractual employees became regular Government Servants. The petitioners having been regularized only after the 2010 Pension Scheme came into force, the petitioners have to be governed as per the 2010 Pension Scheme.

Accordingly, in my view, para 7 of the 2008 Regulation Scheme, has to be given a interpretation to the effect that the petitioners past service as contract employees shall be counted as qualifying service for the purpose of pensionary benefits as per the Pension Rules/Scheme

applicable at the time of regularization, which in this case is the 2010 Pension Scheme. For example, if the writ petitioners at the time of their superannuation do not have the qualifying service required as per the Pension Rule/Scheme to receive pension, then the period of contractual service undergone by the petitioners before their regularization will be counted for the purpose of having the requisite qualifying service for pension. Similarly, the same reasoning has to apply for counting the qualifying service required for "leave". For example, if the petitioners do not have the maximum earned leave allowed as per law at the time of superannuation, the contractual service period will be counted for the purpose of having the qualifying service for availing earned leave. Nothing more can be read into Para 7 of the 2008 Regulation Scheme.

The 2008 Regularization Scheme had been made during the time the CCS Pension Rules, 1972 was in force. The question of "qualifying service" was very much relevant in the CCS Pension Rules, 1972, inasmuch as, unless a Government employee had the minimum qualifying service required to receive pension, the government employee on superannuation was not eligible to receive pension. However, with the coming into force of the 2010 Pension Scheme, it does not seem necessary for a Government employee governed under the 2010 Pension Scheme to have a qualifying service. As such, any contract employee after coming into force of the 2010 Pension Scheme cannot claim to be governed by the CCS Pension Rules, 1972, inasmuch as, para 7 of the 2008 Regulation Scheme cannot relate back to the CCS Pension Rules, 1972. Just because there is no requirement of qualifying service in the 2010 Pension Scheme, the words "qualifying service" cannot be allowed to relate back to the CCS (Pension) Rules, 1972 as the petitioners were never governed by the same. Regularization in this case basically means appointment to a regular and substantive Govt. post.

I also find that para 2.1 (E) (F) of the 2010 Pension Scheme only states that the 2010 Pension Scheme would not apply to those persons if they are under contract employment and if they are governed by other terms and conditions of service. This para 2.1 does not mean that the petitioners were entitled to be governed by CCS Pension Rules, 1972 or the 2010 Pension Scheme at the time of their contractual service. As the petitioners were not governed during their contractual services under the CCS Pension Rules, 1972 or the 2010 Pension Scheme as the post under contract basis is not a pensionable post, no right has accrued to the petitioners to be governed by the CCS Pension Rules, 1972. Para 2.1 only states that the 2010 Pension Scheme shall apply to Govt. servants appointed on regular basis w.e.f. 1.9.2010. As the petitioners were regularized after 1.9.2010, Para 2.1 has to be read to include the petitioners. Thus I find that even the unamended 2010 Pension Scheme covers the petitioner's case and they have to be governed by the same.

17. I have read the Judgment passed in W.P.(C) No. 25 of 2013 (Sh.Lalparliana Sailo & 40 Others –versus- State of Mizoram & 5 others), W.P.(C) No. 93 of 2014 ( Sh.Lalhmingliana & 209 others –versus- State of Mizoram & 5 others), W.P.(C) No. 102 OF 2014 ( Sh. H.Laldingngheta & 46 others –versus- State of Mizoram & 4 others), W.P.(C) No. 8 of 2015 (Smt. Hmingthaluri & 26 others –versus- State of Mizoram & 5 others) and W.P.(C) No. 12 of 2015 (Smt. Vanlalhriati & 14 others –versus- State of Mizoram & 5 others).

18. The facts of the above cases in general are to the effect that the petitioners were contractual employees and their services were regularized after the 2010 Pension Scheme was introduced. The learned Single Judge in the above cases has held that para 7 of the 2008 Regulation Scheme having stipulated that the past services rendered as

continuous contract employees shall be counted as qualifying services for the purpose of leave and pensionary benefits, the petitioners who were contract employees prior to the coming into force of the 2010 Pension Scheme would be liable to be governed under the CCS (Pension) Rules, 1972, as their past service has to be counted for pensionary benefits. The learned Single Judge has also held that in view of Clause 2.1(f) of the 2010 Pension Scheme, the contract employees on regularization were to be governed by the CCS Pension Rules, 1972.

I have also noticed that in WP(C) No. 93 of 2014, the petitioners in that case have placed reliance upon the Judgment and Order dated 23.07.2014 passed in WP(C) No. 46 of 2013 (Mr. K. Lalthanmawia – Vs- State of Mizoram) to support their argument that officiating appointment of a person who was regularized after the 2010 Pension Scheme came into force would entitle the person to be governed under the CCS Pension Rules, 1972.

A perusal of the Judgment and Order dated 23.07.2014 passed in WP(C) No. 46 of 2013 shows that the fact situation is different vis-à-vis the present case inasmuch as, the petitioner in WP(C) No. 46 of 2013, had been appointed initially as meter reader on 31.05.1983 and appointed as Junior Engineer on officiating capacity in the Power & Electricity Department on 15.09.1998. The petitioner in WP(C) No. 46 of 2013 had also been allotted a Provident Fund Account No. PAE (MZ) 1517 since 1990 to 1991 i.e. long before the 2010 Pension Scheme had come into force. However, as the petitioner in WP(C) No. 46 of 2013 had been regularized only on 31.08.2012, this Court had directed that the petitioner should be governed as per the CCS Pension Rules, 1972. However, in the present case, the petitioners have never been allotted in Provident Fund Account number, prior to their date of regularization to be eligible to be governed by the CSS Pension Rules, 1972

19. Due to the reasons stated above, this Court differs from the Judgment and Orders passed in W.P(C) No. 25 of 2013 (Sh. Lalparliana Sailo & 40 Others v. State of Mizoram & 5 Others), W.P(C) No. 93 of 2014 (Sh. Lalhmingliana & 209 Others v. State of Mizoram & 5 Others), W.P(C) No. 102 & of 2014 (Sh. Laldingngheta & 46 Others v. State of Mizoram & 4 Others), W.P(C) No. 8 of 2015 (Smt. Hmingthaluri & 26 Others v. State of Mizoram & 5 Others) and W.P(C) No. 12 of 2015 (Smt. Vanlalhriati & 14 Others v. State of Mizoram & 5 Others). Though this Court is aware that due to divergent views, the matter has to be referred to a larger Bench to decide whether para 7 of the 2008 Regulation Scheme and clause 2.1(f) of the 2010 Pension Scheme entitles a contract employee to be governed by the CCS Pension Rules, 1972 on being regularized after the 2010 Pension Scheme became applicable, I am not referring the matter to a larger Bench, in view of the fact that in the present writ petitions, the Mizoram New Defined Contributory Pension (1<sup>st</sup> amendment) Scheme, 2015 which has been annexed in the writ petitions has not been challenged by the writ petitioners.

20. The "Mizoram New Defined Contributory Pension (1<sup>st</sup> Amendment) Scheme, 2015", is as follows :-

**NOTIFICATION**

**G. 17011/8/2014-F.APF, the 27<sup>th</sup> February, 2015. In exercise of the powers conferred by article 309 of the Constitution of India, the Governor of Mizoram is pleased to make the following Scheme to amend the Mizoram New Defined Contributory Pension scheme, 2010 (hereinafter referred to as the Principal Scheme) namely:**

1. **Short Title and Commencement**
- (1) This Scheme may be called the Mizoram New Define Contributory Pension(First Amendment) Scheme, 2015
- (2) They shall come into force from the date of their publication in the Mizoram Gazette.

2. *Amendment of Para 2*

In Para 2 of the Principal Scheme, for clauses (a), (b), (e) and (f) and of the sub-para 2.1 itself, the following shall be substituted, namely: "2.1 Tier-I of this scheme shall apply only to the Government servants appointed on regular basis with effect from 1.9.2010 onwards/regularized on or after 1.9.2010 to civil services and posts in connection with the affairs of the State which are borne on pensionable establishments, but shall not apply to:-

a) Persons in casual and daily-rated employment who are not regularized.

b) Persons paid from contingencies who are not regularized.

e) Persons employed on contract basis who are not regularized.

**f) Persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law or specific scheme for the time being in force who are not regularized.”**

**3. *Amendment of Para 4***

**For clauses (2) & (4) of Para 4 of the Principal Scheme, the following shall be substituted, namely:**

**“2) It shall become mandatory to the Government servants who entered into the Government service on regular basis/regularized on or after 1.9.2010.**

**4) In this scheme, the existing provisions of Defined Benefit Pension and General Provident Fund would not be available to Government servants who join Government service/regularized on or after 1.9.2010”**

**4. *Amendment of Para 5***

**For clauses (4) & (6) of Para 5 of the Principal Scheme, the following shall be substituted, namely:**

**“4) Government servants joining the service/regularized on or after 1.9.2010 shall not subscribe to the General Provident Fund and shall**



**rather join this New Defined Contributory Pension Scheme automatically.**

**6) Immediately on joining the Government service /regulari-zation, the Government servant shall be required to provide particulars such as his name, designation, scale of pay and Grade Pay, date of birth, nominee (s) for the fund, relationship of the nominee, etc in the prescribed form (Annexure-I). The Drawing and Disbursing Officer concerned shall be responsible for obtaining this information from all Government servants covered under this new pension scheme and shall submit the consolidated information for all those who have joined service/regularized during the month in the prescribed format (Annexure-II) to the CCA who shall cause to allot Permanent Retirement Account Numbers (PRAN) to the Government servants concerned.”**

21. On perusal of the Mizoram Defined Contributory Pension (1<sup>st</sup> amendment) Scheme 2015, I find that the same has retrospective effect and it covers the petitioners as well. The other writ petitions which have been decided by a single Bench of this Court and which have been

referred in this judgment have not gone into the question of the applicability of the 2015 Amendment Scheme.

22. In view of the fact that the petitioners are to be governed by the 2010 Pension Scheme as per the Mizoram Defined Contributory Pension (1<sup>st</sup> amendment) Scheme 2015, which has retrospective effect, and as the same has not been challenged by the writ petitioners, the present writ petitions are dismissed.

JUDGE

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