

No.A.12034/1/2015-P&AR(GSW)
GOVERNMENT OF MIZORAM
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
(GENERAL SERVICE WING)

Dated Aizawl, the 3rd August, 2017

OFFICE MEMORANDUM

Sub: Interpretation of the educational and other qualifications for direct recruitment prescribed in Service Rules/Recruitment Rules and its implementation thereof

References have been received from certain quarters about interpretation of the provisions relating to the educational and other qualifications for direct recruitment for various services/posts prescribed in the corresponding Service Rules/Recruitment Rules and its implementation thereof while conducting the process of direct recruitment.

2. The educational and other qualifications for direct recruitment to various services/posts prescribed in the corresponding Service Rules/Recruitment Rules normally have more than one provision specifying the eligibility conditions to be fulfilled by candidates for direct recruitment to such services/posts. These qualifications basically include the educational qualifications required for the services/posts and in certain cases, the level of work experience required, physical efficiency tests/skills tests, etc. The educational and other qualifications are very often divided into "Essential" as well as "Preferential/Desirable" clauses. It is, however, needless to mention that there are also Service Rules/Recruitment Rules for certain services/posts which do not have separate clauses dividing the qualifications into "Essential" and "Preferential/Desirable" clauses.

3. In this connection, the following instructions are hereby issued for compliance in matters of direct recruitment by all Departments including recruitment under the purview of the Mizoram Public Service Commission:

- a) The qualifications which come under the "Essential" clause in the respective Service Rules/Recruitment Rules must necessarily be fulfilled by candidates for direct recruitment to such services/posts. In addition, it is reiterated that the qualifications coming under the "Essential" clause which are serially numbered as 1,2,3.... should be fulfilled simultaneously by candidates for direct recruitment to such services/posts unless different sets of equivalent qualifications are prescribed in the Services Rules/Recruitment Rules which are separated by the conjunction "OR".
- b) The qualifications prescribed in certain Service Rules/Recruitment Rules which are not divided into separate clauses viz. "Essential" or "Preferential/Desirable" should be treated as essential or mandatory in nature and candidates for direct recruitment to such services/posts must necessarily fulfil all such qualifications unless anything contrary is prescribed in such Service Rules/Recruitment Rules.
- c) Interpretation of the "Preferential" clause prescribed in the Service Rules/Recruitment Rules is a delicate matter which can easily invite litigation when there is stiff competition amongst candidates for direct recruitment. In this connection, the law laid down by the Supreme Court in *State of U.P. & Anr vs Om Prakash & Ors* in Appeal (Civil) No. 5757-5759 of 2002 is reproduced below for compliance:

"The word "preference" would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the

advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-a-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability...

This Court has consistently held that when selection is made on the basis of merit assessed through a competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability. In *Secretary Department of Health & F.W. vs. Dr. Anita Puri* reported in (1996) 6 SCC 282, the Apex Court further held that preferential qualification do not as of right entitle to selection". Further, it is clarified that non-possession of the qualification prescribed in the preferential clause cannot be a valid ground for rejection of the application of a candidate for direct recruitment.

- d) The "Desirable" clause prescribed in the Service Rules/Recruitment Rules should also be interpreted on the lines of the law laid down by the Supreme Court in *State of U.P. & Anr vs Om Prakash & Ors* in Appeal (Civil) No. 5757-5759 of 2002 mentioned at Para 3(c) above.
- e) The eligibility of candidates for direct recruitment as per the qualifications in the relevant Service Rules/Recruitment Rules should be assessed at the initial stage of recruitment itself on the basis of self attested copy of Certificates, etc. issued by the competent authority. However, there are no clear cut instructions to assess the eligibility of candidates for direct recruitment with respect to one of the qualifications prescribed in majority of the Service Rules/Recruitment Rules viz. "*Working knowledge of Mizo language at least Middle School standard*". If the said qualification is essential or mandatory in nature as per the relevant Service Rules/Recruitment Rules, it has been decided that a column should be inserted in the Application Forms to ascertain whether or not the candidate possessed working knowledge of Mizo language at least Middle School standard, preferably to be answered "YES/NO". If the candidate answered the question in writing in the Application Form as "NO", then, the candidate is ineligible as per the corresponding Service Rules/Recruitment Rules and hence, the concerned application should be rejected straightaway by the recruiting body. The application of only such candidates who answered in the affirmative in the Application Form should be accepted. Further, the eligibility of the candidates with respect to this qualification should invariably be checked again at the time of Personal Interview by the Departmental Promotion Committee (DPC) and the DPC is at liberty to devise its own method and procedure for an objective assessment of the suitability of the candidates with respect to this qualification.
- f) If the qualification referred to in Para 3(e) above viz. "*Working knowledge of Mizo language at least Middle School standard*" is coming under the preferential or desirable clause, the procedure prescribed above should still be followed with the exception that the application of a candidate who answered in the negative in the Application Form with respect to the said qualification should not be rejected since the said qualification is only a preferential or desirable qualification.
- g) The physical efficiency tests or skills tests as prescribed in the corresponding Service Rules/Recruitment Rules as an essential qualification should be duly fulfilled by the candidates for direct recruitment to such services/posts but such qualifications should be treated as qualifying in nature only unless anything contrary is prescribed in such Service Rules/Recruitment Rules. In other words, the physical efficiency test or skills test shall be qualifying in nature only and any marks whatsoever obtained by the candidates in these tests shall not be added to determine the final order of merit unless anything contrary is prescribed in such Service Rules/Recruitment Rules

- h) The requirement for work experience as prescribed in the respective Service Rules/Recruitment Rules should be assessed on the basis of a Certificate duly issued by the Head of Department/Institution where the candidate acquired such experiences.
- i) The qualifications prescribed in the Service Rules/Recruitment Rules for direct recruitment for various services/posts sometimes include the provision for equivalent qualifications apart from the main qualification(s). For instance, the qualifications prescribed by the Mizoram Engineering Service Rules, 2013 for direct recruitment to the Junior Grade of Mizoram Engineering Service is "an Engineering degree or an equivalent qualification in the appropriate line...". Interpretation of the "equivalent qualification" in matters of direct recruitment should be done with due care taking into consideration the nature of Degree/Diploma, etc. awarded by the University, Board, Institution, etc concerned vis-a-vis the main qualification prescribed in the relevant Service Rules/Recruitment Rules. In case of doubt, prior clarification from the Government in DP&AR may be obtained.

Sd/- V. LALREMTANGA

Secretary to the Govt. of Mizoram
Department of Personnel & Administrative Reforms

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Dated Aizawl, the 3rd August, 2017

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(LALROHLUA)

Under Secretary to the Govt. of Mizoram
Department of Personnel & Administrative Reforms
(General Service Wing)