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

Case No. : WP(C)/2986/2017

F. LALHMINGLINA and 3 ORS.
INSPECTOR ARMED BRANCH, 1ST BATTALION MIZORAM ARMED POLICE,
ARMED VENG, AIZAWL, MIZORAM.

2: LALRINTLUNGA

INSPECTOR
ARMED BRANCH
5TH INDIA RESERVE BATTALION
LUNGVERH
AKAWRTUICHHUN
AIZAWL
MIZORAM.

3: R. LALRINMAWIA

INSPECTOR ARMED BRANCH
1ST BATTALION
MIZORAM ARMED POLICE
ARMED VENG
AIZAWL
MIZORAM.

4: F. LALROTLUNGA

INSPECTOR ARMED BRANCH
1ST BATTALION
MIZORAM ARMED POLICE
ARMED VENG
AIZAWL
MIZORAM

VERSUS

THE STATE OF MIZORAM AND 4 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF MIZORAM, AIZAWL,
MIZORAM.

2:THE PRINCIPAL SECRETARY

DEPTT. OF PERSONNEL and ADMINISTARTIVE REFORMS
GOVT. OF MIZORAM
AIZAWL
MIZORAM.

3:THE PRINCIPAL SECRETARY

HOME DEPTT.
GOVT OF MIZORAM
AIZAWL
MIZORAM.

4:THE DIRECTOR GENERAL OF POLICE
MIZORAM

AIZAWL
MIZORAM.

5:THE MIZORAM POLICE SUBORDINATE OFFICERS ASSOCIATION MPSOA

AIZAWL
MIZORAM.

6:SHRI LALJOHANA
INSPECTOR OF POLICE
KOLASIB DEF
MIZORAM

7:SHRI LALTHANFALA

S/O ZANEIHTHANGA(L)
INSPECTOR OF POLICE
CID(CRIME)
MIZORAM
AIZAWL.

8:SHRI RAMFANGZAUVA

INSPECTOR OF POLICE
AIZAWL DEF
MIZORAM.

9:SHRI LALCHANGLIANA

INSPECTOR OF POLICE
AIZAWL DEF
MIZORAM.

10:SHRI LALHMANGAIHA

INSPECTOR OF POLICE
POLICE HEADQUARTERS
AIZAWL
MIZORAM.

11:SHRI H. NGUNLUAIA

INSPECTOR OF POLICE
SECURITY
MIZORAM

Advocate for the Petitioner : Mr. K.N. Choudhury, Sr. Advocate
Mr. N. Gautam, Advocate

Advocate for the Respondent : Mr. B. Dev, AG, Mizoram
Ms. P. Bhattacharya, Addl. AG, Mizoram
Mr. S. Das, Advocate

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT & ORDER (CAV)

Date : 08-08-2024

(Suman Shyam, J)

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. N. Gautam, learned counsel appearing for the writ petitioners. Also heard Mr. B. Dev, learned Advocate General, Mizoram assisted by Ms. P. Bhattacharyya, learned Addl. Advocate General, Mizoram appearing for the respondent Nos. 1 to 4 and Mr. S. Das, learned counsel

appearing for the private respondent Nos. 6 to 11.

2. The four writ petitioners, who are serving as Inspector (Armed Branch) under the Mizoram Police, have approached this Court by filing the instant writ petition challenging the proviso to Rule 6(1) of the Mizoram Police Service Rules, 2008 on the ground that the same is *ultra vires* the constitution.

3. The conditions of services of the Inspectors serving under the Mizoram Police used to be governed by the provisions of the Mizoram Police Service Rules, 1997 (hereinafter referred to as the Rules of 1997) framed under the proviso to Article 309 of the Constitution of India. Rule 6 of the Rules of 1997 laid down the procedure for filling up the substantive vacancies in the Junior Grade of Mizoram Police Service. Rules 6 of the Rules of 1997 is reproduced here-in-below for ready reference:-

“6. Recruitment to the service after commencement of these Rules shall be by the following methods only, namely:

1) 50% of the substantive vacancies in the Junior Grade of the Service which occur from time to time shall be filled up by Selection from amongst the officers who have served in the cadre of Inspector of Police under the Government of Mizoram not less than 5 (five) years in the Grade, provided that out of this percentage, one post of Assistant Commandant from each Mizoram Armed Police Battalion/ Indian Reserve Battalion shall be exclusively earmarked as the promotional posts of Inspectors of Mizoram Armed Police Battalion/ Indian Reserve Battalion. Promotions shall be made by Selection from Inspectors of MAP Battalion/ Indian Reserve Battalion who have served not less than 5 (five) years in the Grade.

2) 50% of another substantive vacancies shall be filled up by direct recruitment through Competitive Examinations as provided in these Rules.”

4. The Rules of 1997 was replaced by the Mizoram Police Service Rules, 2008 (hereinafter referred to as the Rules of 2008) framed under proviso to Article 309 of the Constitution. In the amended provision of Rules 6(1) of the Rules of 2008, a proviso has

been added. According to the writ petitioners, proviso to Rule 6(1) has been added with a view to restrict the promotional avenue of Inspectors of the Armed Branch of the Mizoram Police only to the 08 (eight) posts of Assistant Commandant pertaining to the Mizoram Armed Police Battalion/ Indian Reserve Battalion. The provisions of Rules 6(1) of the Rules of 2008 are reproduced herein below for ready reference:-

“6. Recruitment to the service after commencement of these Rules shall be by the following methods, namely:-

1) 50% of the total sanctioned strength of the posts in the Junior Grade of the Service shall be filled up by selection from amongst the officers who have served in the cadre of Inspector of Police under the Government of Mizoram for not less than 5(five) years regular service in the Grade, provided that out of this percentage, one post of Assistant Commandant from each Mizoram Armed Police Battalion/ India Reserve Battalion shall be the promotional posts of Inspectors of Mizoram Armed Police Battalion/ India Reserve Battalion. Promotion shall be made by Selection from Inspector of Mizoram Armed Police Battalion/ India Reserve Battalion who have served not less than 5(five) years in the Grade.

2) The other 50% of the total sanctioned strength of the posts in the Junior Grade of the Service shall be filled up by direct recruitment through Competitive Examination as provided in these Rules.”

5. According to the petitioners, although there are more than 54 posts of Assistant Commandants in the Junior Grade, yet, after the introduction of Rule 6(1) of the Rules of 2008, the Inspectors belonging to the Armed Branch of Mizoram Police can be promoted only against the 08 (eight) posts of Assistant Commandants earmarked under proviso to Rule 6(1) and no further. As such, the provisions of Rule 6(1) of the Rules of 2008, according to the writ petitioners is *per-se* unfair, discriminatory and hence, liable to be struck down by this Court.

6. Mr. K.N. Choudhury, learned Sr. counsel appearing for the writ petitioners, by referring to the decision of the Supreme Court rendered in the case of **Dwarka Prasad**

Vs. Dwarka Das Saraf, reported in **(1976) 1 SCC 128** has argued that the proviso to Rule 6(1) of the Rules of 2008 seeks to unfairly take away the right conferred upon his clients under the principal provision in a manner which is impermissible in the eyes of law. According to Mr. Choudhury since the Inspectors of Armed Branch and Unarmed Branch, forming the feeder cadre for filling up 50% of promotional posts, from a composite cadre, there is no scope for any further discrimination amongst them for the purpose of promotion. As such, submits Mr. Choudhury, proviso to Rule 6(1) is violative of the principles of equality embodied in Articles 14 and 16 of the Constitution of India.

7. Opposing the said submission Mr. B. Dev, learned Advocate General, Mizoram has invited the attention of this Court to the judgment and order dated 18-06-2012 passed by the learned Single Judge in W.P.(C) No. 32/2012 whereby, a similar argument made on behalf of the Inspectors of Armed Branch of Mizoram Police was negated, so as to submit that the judgment and order dated 18-06-2012 having attaining finality in the eyes of law, the petitioners cannot now take a stand which is contrary to the aforesaid decision of this Court.

8. By referring to two decisions of the Supreme Court rendered in the cases of ***State of Madhya Pradesh Vs. Rakesh Kohli & Ors.*** reported in **(2012) 6 SCC 312** as well as in the case of ***A.P. Cooperative Oil Seeds Growers Federation Ltd. Hyderabad, Andhra Pradesh Vs. D. Achuta Rao & Ors.*** reported in **(2007) 13 SCC 320**, Mr. Dev has further argued that merely because a particular service rule may cause hardship to a category of employees, the same cannot be a justifiable ground to strike down the same. It is also the submission of the learned Advocate General, Mizoram that unless it is found

to be a glaring case of violation of constitutional provisions, the law made by the Parliament or State Legislature ought to be upheld by the Court.

9. Mr. S. Das, learned counsel appearing for the private respondents, by referring to the pleadings brought on record, has submitted that if the proviso to Rule 6(1) of the Rules of 2008 is interfered with by this Court, then in that event the promotional avenues of his clients belonging to the Unarmed Branch would be significantly reduced, thus prejudicially affecting their interest. Contending that no case for interference with the proviso to Rules 6(1) has been made out by the petitioners, Mr. Das has prayed for dismissal of the writ petition.

10. We have considered the submission made at the Bar and have also carefully gone through the materials available on record. As has been noticed hereinabove, the primary grievance of the petitioners in this writ petition is to the effect that proviso to Rule 6(1) of the Rules of 2008 has the effect of discriminating the Inspectors of Armed Branch as against their counter parts from the Unarmed Branch for the purpose of extending the benefit of promotion, without any reasonable basis, thus treating equals unequally. As such, according to the writ petitioners, proviso to Rule 6(1) of the Rules of 2008 militates against the basic philosophy of equality enshrined under Articles 14 and 16 of the Constitution of India. From a careful examination of the relevant provisions of the Rules of 1997 as well as the Rules of 2008, we find that the rules recognize as many as 05 (five) different grades in the Mizoram Police Service, which are (a) Sr. Administrative Grade (Functional and Non-functional); (b) Selection Grade (Functional and Non-functional); (c) Junior Administrative Grade; (d) Sr. Grade; (e) Junior Grade. The posts of Assistant

Commandants belongs to the Junior Grade. The post of Inspectors forms the feeder cadre for filling up the posts in Junior Grade by way of promotion.

11. Rule 17 of the Rules of 1997, which prescribe the promotional parameters, is quoted here-in-below for ready reference:-

“17. PROMOTION TO HIGHER GRADE:

1) Promotion of members of the service to the Senior Grade, Junior Administrative Grade, Selection Grade and Senior Administrative Grade shall be made in consultation with the Commission by selection method.

2) A member of the service in the Junior Grade with a minimum period of 5 (five) years of service in the Grade and who is confirmed and has passed departmental examination will be eligible for consideration for promotion to the Senior Grade.

3) A member of service in the Senior Grade with a minimum of 5 (five) years service in the Grade or with a minimum of 10 (ten) years of service in the Mizoram Police Service will be eligible for promotion to the Selection Grade.

4) A member of the service in the Selection Grade, with a minimum of 5 (five) years of service in the Grade will be eligible for consideration for promotion to the Senior Administrative Grade.”

12. The aforesaid provisions in the Rules of 1997 have remained unchanged even under the Rules of 2008. We find that the only notable difference between the Rules of 1997 and 2008 for the purpose of this case, is in respect of Rule 6(1). As has been mentioned hereinabove, by adding a proviso to Rule 6(1) of the Rules of 2008, the number of posts in the rank of Assistant Commandants that can be filled up by promoting the Inspectors from the Armed Branch have been restricted only to 08 (eight) posts whereas, for the Inspectors of the Unarmed Branch their promotional avenues have been kept open in respect of all other posts in the Junior Grade. This was, however, not the position under Rule 6(1) of the Rules of 1997 wherein 08 (eight) posts of Assistant Commandants had been exclusively reserved for being filled up by promoting the

Inspectors of the Armed Branch, without imposing any restriction on the right of those Inspectors to be considered for the additional promotional posts in the Junior Grade.

13. Thus, from a comparative analysis of Rule 6(1) under both the Rules, we find that whereas, under the provisions of Rule 6(1) of the Rules of 1997 there was a provision so as to ensure that at least 08 (eight) posts of Assistant Commandants would always be filled up by promoting the Inspectors from the Armed Branch, subject to their fulfilling the other requirements under the Rules, by adding the proviso to Rule 6(1) of the Rules of 2008, the authorities have now restricted the scope of promotion of the Inspectors of Armed Branch only to those 08 (eight) posts of Assistant Commandants. However, from a careful reading of the provisions of the Rules, we are of the view that proviso to Rule 6(1) of the Rules of 2008 does not appear to be in consonance with the object sought to be achieved by the main provision of Rule 6(1) which lays down that 50% of the total sanctioned strength of the posts in Junior Grade shall be filled up from amongst the Inspectors of Police serving under the Govt. of Mizoram having not less than 05 (five) years of regular service in the cadre. In other words, we are of the opinion that there is an element of repugnancy and to that extent, ambiguity in the rules when Rule 6(1) of the Rules of 2008 is read along with the proviso thereto. It is to be noted herein that Rule 6(1) *per se* does not make any distinction amongst the Inspectors of Armed Branch and Un-armed Branch for the purpose of filling up 50% of the vacancies in Junior Grade by way of promotion but the proviso to the said rule does so.

14. It is be borne in mind that one of the dominant purpose of framing service rules under the proviso to Article 309 of the Constitution of India is to give effect to the

principles of equality, as enshrined under Articles 14 and 16 of the Constitution of India. In the present case, as noted above, the Rules of 6(1) of the Rules of 2008 clearly provides that 50% of the posts in Junior Grade would be filled up by promoting eligible officers from the cadre of Inspectors of Police having the requisite length of service. It is, therefore, evident that the cadre of Inspectors, as envisaged under the Rules of 2008, is a composite cadre. If that be so, we are of the considered opinion that it will be highly discriminatory and unfair to restrict the promotional avenues of the Inspectors of the Armed Branch to only the 08 (eight) posts of Assistant Commandants while leaving all the other promotional posts in the Junior Grade open for being filled up by the Inspectors from the Un-armed Branch.

15. Further more, from a meticulous examination of Rule 6(1) of the Rules of 2008, we are also of the opinion that the proviso to the rules have been added so as to introduce a distinction between two categories of Inspectors, one belonging to Armed Branch and other to the Unarmed Branch, even though the principal provision of Rule 6(1) does not admit of any such distinction between the two categories of Inspectors. Therefore, we find force in the submission of Mr. K.N. Choudhury, learned Sr. counsel appearing for the petitioners that the proviso to Rule 6(1) seeks to unconstitutionally limit the promotional avenues of his clients, thus extending an unfair and discriminatory treatment to them.

16. It is no doubt correct that ordinarily the Court would presume constitutionality of any legislation. Unless the piece of legislation suffers from want of competence or the same abridges the Fundamental Rights enumerated under Part III of the Constitution, ordinarily, there would be no occasion for the Court to strike down such rules. However,

as noted hereinabove, we find that proviso to Rule 6(1) of the Rules of 2008 seeks to violate the fundamental rights of the writ petitioners, who are serving as Inspectors of the Armed Branch, by restricting their promotional avenue to only 08 (eight) posts of Assistant Commandants thus meting out a discriminatory treatment to them. Therefore, proviso to Rule 6(1) of the Rules of 2008, in our opinion, would be in conflict with Part III of the Constitution of India, if the interpretation sought to be given to the proviso to Rule 6(1) by the State of Mizoram is accepted by this Court.

17. In the case of ***Indra Das Vs. State of Assam***, reported in **(2011) 3 SCC 380**, the Supreme Court has held that in a case where a particular statute violates the constitutional provision, primary attempt should be to read down the same so as to make it constitutional as otherwise the provision of the statute has to be declared as unconstitutional.

18. As has been noted in the forgoing paragraphs, under Rule 6(1) of the Rules of 1997, an attempt had earlier been made to reserve as many as 08 (eight) posts in the Junior Grade for being filled up exclusively by the Inspectors of the Armed Branch. However, the said position has not only been reversed by inserting the proviso to Rule 6(1) of the Rules of 2008 but by using the expression "shall be the promotional posts of Inspectors of Mizoram Armed Police Battalion/ Indian Reserve Battalion", the promotional avenues of this category of Inspectors have also been restricted to only 08 (eight) posts. After a comprehensive analysis of the rules, we are of the view that proviso to Rule 6(1) of the Rules of 2008 is wholly inconsistent with the object sought to be achieved by the Rules of 2008, more particularly, Rule 6(1) of the Rules of 2008.

19. It appears that the object of the Rules of 2008 is to promote and protect the interest of the Inspectors serving under the Mizoram Police in both Armed Branch and Un-armed Branch. Therefore, unless the proviso to Rule 6(1) of the Rules of 2008 is read down by this Court, the said provision would have to be declared unconstitutional and accordingly struck down by this Court.

20. It is a salutary principle of law of interpretation of statute that Court should make every effort to preserve the validity of a legislation and should only declare a law invalid as a last resort. By adopting a harmonious construction of the rules, we are of the opinion that proviso to Rule 6(1) is required to be read down so as to render the same constitutionally valid. The rules ought to be interpreted in a manner which provides equal opportunity of promotion to the Inspectors of Armed Branch as well as Un-armed Branch of the Mizoram Police. Such an interpretation of the rules, in our opinion, would not only make the Rule 6(1) workable but the same will also prevent the rules from being struck down by the Court on the ground of the same being in conflict with Part III of the Constitution of India.

21. Mr. Dev has placed heavy reliance on the decision of the learned Single Judge rendered by the judgment and order dated 18-06-2012 in W.P.(C) No. 32/2012 so as to argue in support of validity of the Rules. However, on a careful reading of the said judgment, we find that it was not a case where the validity of Rule 6(1) was under challenge. Therefore, the decision rendered in the aforesaid case, in our opinion, has to be understood to be rendered to the facts of that case.

For the reasons stated hereinabove, this writ petition stands allowed. The petition is

disposed of in the lights and observations made hereinabove by reading down the proviso to Rule 6(1) of the Rules of 2008.

Consequently, it is provided that the petitioners, being Inspectors belonging to the Armed Branch of the Mizoram Police, shall be entitled to be considered for promotion against the earmarked vacancies in the Junior Grade, in addition to the 08 (eight) posts envisaged by proviso to Rule 6(1) of 2008 Rules and *at par* with the Inspectors of the Un-armed Branch, subject to their fulfilling the eligibility norms and any other conditions laid down by the Rules of 2008.

Writ petition stands disposed of accordingly.

Parties to bear their own cost.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant