

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

ITANAGAR PERMANENT BENCH

W.P.(C)164(AP)2016

1. Sri Yumlam Tach
AE, Sub-Division-III
PWD, Naharlagun
District Papum Pare, A.P.
2. Sri Bamang Rai
AE, Sangram Sub-Division
PWD, District Kurung Kumey, A.P.
3. Sri Langpu Kumar
AE, Tali Sub-Division
PWD, District Kra Dadi, A.P.
4. Sri Kumar Mangfi
AE, Pipu Sub-Division
PWD, District East Kameng, A.P.
5. Sri Khandu Wage
AE, Capital Sub-Division-I/A
PWD, Itanagar
District Papum Pare, A.P.
6. Sri Kengo Bam
ASW(Central Zone-B), Capital Division-A
PWD, Itanagar
District Papum Pare, A.P.
7. Sri Nangram Sima
AE, Koloriang PWD Sub-Division
District Kurung Kumey, A.P.
8. Sri Kapil Natung
AE, Bana Sub-Division
PWD, District East Kameng, A.P.
9. Sri Toko Tatam
AE, Jairampur Sub-Division
PWD, District Changlang, A.P.
10. Sri Toko Taje
AE, Yachuli Sub-Division
PWD, District Lower Subansiri, A.P.
11. Sri Takam Langdip
AE, Palin Sub-Division
PWD, District Kra Dadi, A.P.

12. Sri Nangbia Tedi
AE, NH-52A under Naharlagun Highway Division
PWD, District Papum Pare, A.P.
13. Sri Nangram Mire
ASW, Sangram Sub-Division
PWD, District Kurung Kumey, A.P.
14. Sri Achung Bagang
AE, Chayangtajo PWD Division
District East Kameng, A.P.
15. Sri Bini Sha
AE, Kamlangnagar Sub-Division
PWD, District Lohit, A.P.
16. Sri Tatubor Jamoh
AE, Pangin Sub-Division
PWD, District Kurung Kumey, A.P.

.... ***Petitioners***

-Versus-

1. The State of Arunachal Pradesh represented by the Secretary, PWD, GAP, Itanagar.
2. The Commissioner, PWD, Govt. of Arunachal Pradesh, Itanagar.
3. The SE(Coord. Trg. & Vlg.) Department, Govt. of Arunachal Pradesh, Itanagar.
4. Sri Samuel Gao, JE, PWD Pasighat, PO/PS-Pasighat, East Siang District, A.P.
5. Sri Tapang Tatak, JE, PWD Pasighat, PO/PS- DA, A.P.
6. Sri Dodum Dada, JE, PWD Bameng, PO/PS-Bameng, East Kameng, A.P.
7. Sri Anand Bagang, JE, PWD Pakke Kesang, PO/PS- Pakke Kesang, East Kameng District, A.P.

..... ***Respondents***

By Advocates:

For the petitioners	:	Mr. Kento Jini Mr. Tamar Gadi Mr. D. Loya Mr. Binter Picha Ms. S. Ketan Mr. G. Ngomdir Mr. J. Jini Mr. G. Bam Mr. G. Kalo Mr. M. Rime
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For the respondents : Mr. Duge Soki, Addl. Senior G.A.
Mr. Dicky Panging

:::BEFORE:::

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 20.04.2017

Date of Judgment : **20.04.2017**

JUDGMENT & ORDER(ORAL)

Heard Mr. Kento Jini, learned counsel, appearing on behalf of the petitioners. Also heard Mr. Duge Soki, learned Addl. Senior Government Advocate, for State Respondents No. 1 to 3; and Mr. Dicky Panging, learned counsel for private Respondents No. 4 to 7.

2. By this petition, the petitioners, altogether 16 in nos., have challenged the order of reversion that has been issued by the respondent Commissioner(PWD), Government of Arunachal Pradesh, Itanagar, whereby they have been reverted back to their original post of Junior Engineers w.e.f. 01.04.2016.

3. The case of the petitioners is that while issuing the order dated 12.07.2013, 30.12.2013, 11.07.2014, 18.06.2014, 26.06.2014, 18.11.2014, 25.11.2014, 10.12.2014, 29.12.2014, 27.05.2015, 08.06.2015, 13.01.2016, and 13.01.2016[Annexure-1(series)], they were allowed to look-after the charges of AE at their own pay-scale of JE till posting of regular AE, in exigency of work. It has also been clearly stipulated that such arrangement is made purely on temporary basis which could be discontinued at any time without serving any notice and shall not confer upon them any right for regular promotion in future.

4. In view of the above order, the petitioners were continuing in the said posts of Assistant Engineer, but, subsequently, vide impugned order dated 08.03.2016 issued by the Commissioner(PWD), Government of Arunachal Pradesh, Itanagar, they were reverted back to their earlier posts of Junior Engineer.

5. Raising the grievances that the petitioners were allowed to continue in the said posts of Assistant Engineer till posting of regular AE, the petitioners have contended that they should be allowed to continue in the posts of AE, till regular appointment and for redressal of their grievances, this writ petition has been preferred by them.

6. Considering the submissions that have been made by Mr. Jini, learned counsel for the petitioners, and also the terms and conditions of appointment to the posts of AE, at the time of issuing such appointment order, in the year 2013 to 2016, this Court had passed an interim order in their favour till the time, the posts of AEs are regularly filled-up.

7. By filing the counter affidavit, the State Respondents No. 1 to 3, have basically contended that the Governor of Arunachal Pradesh had issued an Office Memorandum dated 10.02.2016 whereby all officiating/functional appointments and the promotions made on out-of-turn basis, are directed to be cancelled immediately and the lower level functionaries must be reverted back to the original substantive posts from which they were promoted to higher posts on officiating/functional basis. In view of the aforesaid Office Memorandum, the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, issued the Office Memorandum dated 11.02.2016 directing all irregular officiating/functional appointments and out-of-turn promotions made are to be cancelled forthwith and the lower level functionaries must be reverted back from the irregularly promoted/appointed higher posts to the original substantive posts from which they were promoted/appointed on officiating/functional basis. Accordingly, in compliance with the aforesaid Office Memorandum dated 11.02.2016, the respondent authority have issued the impugned order dated 08.03.2016.

8. The State Respondents have contended that there is no irregularity or illegality on the part of the respondent authorities while issuing the impugned order dated 08.03.2016. By referring to the seniority position of the petitioners, it has been contended by the State Respondents that they are far below in the seniority list so as to consider them to continue to hold the posts of AE and there is no immediate prospect of their promotion.

9. It has been further contended by the State Respondents that while the aforesaid Office Memorandum dated 11.02.2016 is still in force, the respondent authorities is bound to comply with the directions as contained in the said OM and on the basis of which only, the impugned order dated 08.03.2016 have been issued by the authority concerned. That apart, the petitioners who are admittedly much junior as per the seniority list, have no enforceable right to continue in the said posts of AE in the given facts and circumstances.

10. On the other hand, Mr. Panging, learned counsel for private Respondents No. 4 to 7, has drawn the attention of this Court to their counter affidavit and the averments so made in the said counter affidavit, to the extent that the private Respondents No. 4 to 7 are much more senior to that of the petitioners and provisional seniority list has also been appended to the said counter affidavit in support of their contention. The said private Respondents No. 4 to 7 have also referred to the Office Memorandum dated 11.02.2016 issued by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar.

11. Mr. Panging, learned counsel, has further contended that the petitioners who have no legal right to challenge the aforesaid impugned order dated 08.03.2016 as well as the Office Memorandum dated 11.02.2016, are not entitled to get any relief under the writ jurisdiction there being no enforceable legal right on their part.

12. Mr. Panging, learned counsel, has also relied upon the decision of the Apex Court as rendered in the case of ***State of Orissa v. Ram Chandra Dev & anr.***, reported in ***AIR 1964 SC 685*** wherein it has been held that under Article under Article 226 of the Constitution of India, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said Article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. Though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is

illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226.

13. Today, Mr. Jini, learned counsel for the petitioners, by filing an additional affidavit has submitted that ACRs of some of the petitioners have been called for consideration before the Departmental Promotion Committee(DPC) and as such, a prayer has been made to allow the petitioners to continue to hold the posts of AE till posting of regular AEs.

14. Such a submission that as the ACRs of some of the petitioners have been called for consideration by the Departmental Promotion Committee(DPC), the same cannot be a ground to interfere into the impugned order dated 08.03.2016, as has been canvassed by Mr. Jini, learned counsel for the petitioners before this Court.

15. I have duly considered the submissions of the rival parties and also gone through the documents that have been made available before this Court.

16. Upon consideration of all relevant facts and circumstances of the case, at hand, the only crucial question to be determined by the Court is as to whether the said impugned reversion order dated 08.03.2016 has been properly issued by the respondent authority or it suffers from any illegality or irregularity.

17. It transpires that the present petitioners, vide their appointment order, issued in the year 2013 to 2016, were allowed to officiate as AEs on certain terms and conditions, for which they got the privilege to raise their grievances before this Court that they should be allowed to continue in the said posts of AE until posting of regular AEs. Whatsoever it may be, the said appointment order of the petitioners cannot be continued with, in view of the operation of the Office Memorandums dated 10.02.2016 and 11.02.2016 which holds the field till date.

18. It is also seen that the petitioners have neither challenged the aforesaid Office Memorandums nor it had been superseded by another Government Circular. That being so, while issuing the impugned order dated 08.03.2016, although no reference has been made by the authority concerned as against the Office Memorandum dated 11.02.2016 but it can be very well construed that the

said order had been issued in pursuance to the directions that has been passed in the said Office Memorandum because the said OM was circulated to all the HoDs as on 12.02.2016 and in pursuant to which only, the said impugned order had been issued by the Commissioner(PWD), Government of Arunachal Pradesh, Itanagar.

19. Obviously, the impugned order suffer from no illegality and as has been discussed earlier, the petitioners have no legal enforceable right as against the order of reversion they being much junior to the private Respondents No. 4 to 7.

20. It has been indicated in the petitioners' appointment order, referred to above, that their promotion was a temporary arrangement only and thus, the petitioners cannot perpetuate their claim as against such order.

21. Situated thus, the petitioners are not entitled to get any relief as sought for in this writ petition. Accordingly, this Court is not keen to interfere with the impugned order dated 08.03.2016 issued by the respondent Commissioner (PWD), Government of Arunachal Pradesh, Itanagar, under Memo. No. SPWD-350/2015/877-87.

22. In view of the above, this writ petition stands dismissed. Consequently, the earlier interim order stands vacated.

23. Parties shall bear their own costs.

JUDGE

Bikash