

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

WP (C) 286(AP) 2015

1. Bipul Roy,
Scientist-B, NIELIT,
Itanagar Centre, Naharlagun,
Papum Pare District, A.P.
2. Anil Kumar,
Scientist-B, NIELIT,
Itanagar Centre, Naharlagun,
Papum Pare District, A.P

.....Petitioners.

Advocates for the Petitioners:
Mr. D. Panging.

-Versus-

1. The union of India through the Secretary,
Department of Electronics and Information
Technology, Ministry of Electronics and IT,
Electronics Niketan, 6-CGO Complex, Lodhi Road,
New Delhi-110003.
2. The Secretary, Department of Electronics and
Information Technology, Ministry of Electronics and
IT, Electronics Niketan, 6-CGO Complex, Lodhi
Road, New Delhi-110003.
3. The National Institute of Electronics and
Information Technology through its Managing
Director, NIELIT Head Quarters, Electronics
Niketan, 6-CGO Complex, Lodhi Road, New Delhi-
110003.
4. The Managing Director, NEIT Society,
NIELIT Head Quarters, Electronics Niketan, 6-CGO
Complex, Lodhi Road, New Delhi-110003.

5. The Registrar, NIELIT Society,
NIELIT Head Quarters, Electronics Niketan,
6-CGO Complex, Lodhi Road, New Delhi-110003.
6. The Governing Council, NIELIT Society,
Through its Chairman the Minister, Communication
and Information Technology,
Electronics Niketan,
6-CGO Complex, Lodhi Road, New Delhi-110003.
7. The Director, NIELIT Centre,
Aizawal, Industrial Estate, Zuangtui,
Aizawal, P.O. Aizawal, District: Aizawal,
Mizoram-796017.
8. The Director, NIELIT Centre,
Naharlagun, E-Sector, Near Shiv Mandir,
Naharlagun, Papum Pare District,
Arunachal Pradesh-791110.

.....*Respondents.*

Advocates for the Respondents:

Mr. N. Ratan, CGC for respondent Nos. 1 & 2.

Mr. R. B. Yadav, for respondent Nos. 3 to 8.

:::BEFORE:::

HON'BLE JUSTICE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 18.04.2017.

Date of Judgment & Order : 18.04.2017.

JUDGMENT & ORDER (Oral)

Heard Mr. D. Panging, learned counsel for the petitioners. Also heard Mr. N. Ratan, learned CGC for respondent Nos. 1 & 2/ Union of India and Mr. R. B. Yadav, learned counsel for other respondent Nos. 3 to 8.

2]. National Institute of Electronics and information Technology (hereinafter referred to as NIELIT only)/, which was earlier known as Department of Electronics and Accreditation of Computer Course (DOEACC) is an autonomous scientific society under the administrative control of Department of Electronics and Information Technology (hereinafter referred to as Deity only), Ministry of Communications and Information Technology, Government of India, was set up to carry out Human Resource Development and related activities in the area of Information, Electronics and Communication Technology. Since the NIELIT is under the full administrative and financial control of the Deity, Ministry of Communications and Information Technology, Government of India, as such NIELIT is a State as defined under Article 12 of the Constitution of India.

3]. The brief case of the petitioners is that pursuant to the amendment in the relevant service rules to fill up vacant posts on regular basis only, an advertisement dated 25.02.2010 was issued inviting applications for filling up various posts in the than DOEACC Society which has now been renamed as NIELIT including four posts of Scientist-B on regular basis. Accordingly, the petitioners being otherwise eligible and interested applied for the same and were selected in terms of their merit position. However, the petitioners were offered appointment on short term contract basis. Thereafter, the petitioner made enquiries as to why the offer of appointment was being made for appointment on short term contract basis contrary to what the advertisement dated 25.02.2010 provided for. Upon such enquiry the petitioners were told by the concerned authorities that since detailed procedure was being worked out for regularization of personnel appointed on contract basis against the sanctioned posts, their cases will also be regularized along with others after the modalities are worked out. Accordingly, since the petitioners lookout for suitable employment and not being in a position to bargain with the concerned authorities and under the bonafide belief that their appointments will be subsequently regularized with consequential benefits and also because of the fact that they were being given regular scale of pay, accepted the offer of appointment given vide letter dated 10.08.2010. Pursuant to such offer of appointment, petitioner No. 2 was first appointed vide order No. DOEACC/AIZ/ 203/ 17/07 dated 09.09.2010 as Scientist-B and the petitioner

No. 1 was appointed vide Order No. DOEACC/AIZ/ 203/ 19 (Pt.)/ 08 dated 17.02.2011 as Scientist-B on short term contract basis for a period of 5 years. Thereafter, the petitioners were transferred to the Itanagar Centre, it was later on learnt that the two other candidates who also applied in terms of the same advertisement were appointed on regular basis in a very discriminatory manner. Thereafter, the petitioners has been representing on many occasions to the concerned authorities for clearance of their probation period and regularization of their Services. However, except some bold assurances that the modalities for their regularization of their services under active consideration, nothing was done. The petitioners states that they ought to have been appointed on regular basis in terms of the advertisement dated 25.02.2010 and in consonance with the amended rules holding the field. Further, the action of the respondent authorities in applying different yardsticks while making appointments by appointing two officers who also applied in terms of the same advertisement, on regular basis and the petitioners on contract basis is discriminatory and violative of Article 14 & 16 of the Constitution of India. With the aforesaid grievances, the petitioners have come up with this writ petition praying for regularization of their services as Scientist-B with retrospective effect from the date on which they were appointed as Scientist-B with further direction to the respondent authorities not to discontinue the services of the petitioners.

4]. The respondent Nos. 1 & 2 is represented by the learned CGC Mr. Ratan, who made a verbal submission and no affidavit has been filed. On the other hand, the respondent Nos. 3 to 8 in their affidavit-in-opposition has submitted that although the relevant advertisement was issued for making appointment to the post of Scientist-B on regular basis, but subsequently, considering the existing condition and administrative reasons, the decision was changed by the competent authority and accordingly, offers of appointments were issued to the writ petitioners for their proposed appointment to the post of Scientist-B on contractual basis. In the aforesaid appointment letter, dated 10.08.2010, all the terms and conditions for their appointments clearly spelt out that the appointment was made for 5 years on contractual basis with further declaration that their appointment will cease automatically in terms of the contract, if not extended. As the petitioners

confirmed their unconditional acceptance and continued the service without any objection, so they could not challenged the said appointment, subsequently. It is also contended that though the advertisement dated 25.10.2010 was issued inviting applications for recruitment for 4 nos. of posts of Scientist-B on regular/ deputation basis including permanent absorption but subsequently considering the existing work load and other associated conditions. The authorities decided that out of 4 nos. of posts of vacant posts, 2 nos. of posts would be filled on regular basis and remaining 2 nos. of posts through short term contractual basis. Accordingly, 2 other selected persons Mr. B. H. Kiangte and K. H. Reka Devi were appointed from un-reserved category and OBC on regular basis. It has been submitted that there is no discrimination/ mala fide whatsoever alleged while appointing the other persons on regular basis. However, it is submitted that the representation of the writ petitioners for regularization are still under active consideration by the competent authorities and no injustice has been meted to them yet.

5] I have considered the submission of the learned counsels for both the parties and gone through the documents that has been annexed in this writ petition. According to the learned counsel for the petitioner such a conduct of the respondent authorities obviously reflects that the petitioners were not treated equally to the other candidates who were also appointed under the same selection process.

6] It has been submitted that action of the respondent authorities are illegal, arbitrary, irrational, unfair and capricious and same are flagrant violation of Article 14 & 16 of the Constitution of India and settled principles of services jurisprudence. The conduct of the respondent authority in appointing 2 officers on regular basis and 2 others on contract basis out of 4 posts advertised in the given circumstances, is totally unfair and dehors the Rules.

7]. Reliance has been placed to the decision of Hon'ble Supreme Court in the case of M. Nagaraj-vs- Union of India reported in (2006) 8 SCC 212, the relevant observation is quoted below:-

"106 The gravamen of Article 14 is equality of treatment. Article 14 confers a personal right by enacting a prohibition which is absolute. By judicial decisions, the doctrine of classification is read into Article 14. Equality of treatment under Article 14 is an objective test. It is not the test of intention. Therefore, the basic principle underlying Article 14 is that the law must operate equality on all persons under like circumstances. (emphasis According to the Constitutional Law of India, by H.M. Secretary, 4th Edin., p.546, is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those on whom it is conferred. This is the theory of "guided power". This theory is based on the assumption that in the event of arbitrary exercise by those on whom the power is conferred, would be corrected by the courts. This is the basic principle behind the enabling provisions which are incorporated in Articles 16 (4-A) and 16 (4-B). Enabling provisions are permissive in nature. They are enacted to balance equality with positive discrimination. The constitutional law is the law of evolving concepts. Some of them are generic, others have to be identified and valued. The enabling provisions deal with the concept, which has to be identified and valued as in the case of access via-a-vis efficiency which depends on the fact situation only and not abstract principle of equality in Article 14 as spelt out in detail in Articles 15 & 16. Equality before the law, guaranteed by the first part of Article 14, is a negative concept while the second part is a positive concept which is enough to validate equalising measures depending upon the fact situation".

"118The constitutional principle of equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with the content of the law but with its enforcement and application. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified, Justification needs each case to be decided on case-to-case basis".

8]. The learned counsel for the Union of India made no separate submission and gone by the submission made by the learned counsel for the rest of the respondents. The learned counsel for respondent Nos. 3 to 8 basically tried to impress the Court only on the point that such arrangements was made for appointing 2 officers on regular basis and other 2 for short term contract basis only for certain existing conditions and administrative reasons. On a query made by this Court, the learned counsel, however, could not reply as to what are the administrative reasons or other conditions under which 2 of the persons were appointed on regular basis while other 2 were

appointed on contract basis as against the same advertisement. The learned counsel could not address the issues, there being no supporting documents in this regard. It is to be noted that save and accept the aforesaid averments, no any official documents/ file has been produced before this Court to justify their action as has been stated above.

9]. Learned counsel for the petitioner has led this Court to the documents that has been annexed along with the relevant Rules (earlier), vide Annexure-3 and the amended Rule of DOEACC Society, dated 08.12.2009, vide Annexure-4 as well as the advertisement for recruitment, dated 25.02.2010, vide Annexure-5, 5A and other connected documents. This court has gone through all those documents.

10]. As per the earlier Rule 3.1 of Service/ Staff Rules of DOEACC Society, all appointments will be made either on contract or on deputation basis for a period of 5 years as against the sanctioned posts on graded scale of pay. On completion of said period, the contract can be further be extended based on performance. The said Rule was amended subsequently vide Annexure-4 whereby it is provided that "all appointments will be made either by the direct recruitment on regular basis or on deputation basis including permanent absorption against the sanctioned posts". It is to be noted that after this amendment, the authorities has advertised for recruitment to the several posts including the posts of Scientist-B (of the petitioners) for filling up of various posts on regular/ deputation basis including permanent absorption basis, dated 25.02.2010. From the communication of the respondent authority vide Annexure-5B, dated 12.05.2010, it appears that the authorities has intimated the member of the selection committee that they are intending to recruit Scientist B and C on regular basis. Thereafter, the selection Committee recommended the selection of both the petitioners and petitioner No. 2 secured the 2nd position in the select list whereas the petitioner No. 1 secured 6th position in the select list and one K.H. RekaDevi stood 3rd position and another V. Khiangte secured 1st position. But while issuing appointment order to present two petitioners, they were appointed for short term Contract basis for 5 years whereas the other two above named persons Serial No. 1 & 3 has been appointed on regular basis on the same scale of pay. Such an

affair on the part of the respondents is wholly contrary to their own advertisement. As has been mentioned above, as per the amended Rules, no appointment can be made on contract basis. It is apparent that the authority has not only flouted the norms and Rules and has arbitrarily used the power of discretion while appointing the present two petitioners. As has been discussed above, the respondent authorities is a State as per the Article 12 of the Constitution of India and as such they are bound to carry transparency in the matter of selection and appointment strictly according to the Rules , which has not been adhered to by the respondent authority. Although, discretion always not a subject of criticism but such discretion should be exercised only on the sound principle of reasonableness which is not found in the given case. The respondent authority has extremely failed to disclose anything as to the reason of deviating from their own Rules and procedure and as about the reasons for exercising such discretion.

11]. It is pertinent to note here all the selected candidates stood at par with each other and there is no opinion of the selection committee whatsoever that such persons should be categorised while at the time of appointment, as has been done by the respondent authorities. Without going any further, it can be held that decision of the respondent authority is vitiated by arbitrariness and beyond the test of reasonableness and liable to be interfered into.

12]. The contention of the respondent that the petitioners have accepted the offer of appointment knowing fully well about the terms and condition of the appointment and has continued till date and as such, they cannot raise any grievances at this belated stage, hold no water, in view of their own illegal conduct while issuing such appointment letter. A person in need of service and that too being selected for the posts cannot resist himself from joining to the post, irrespective of the terms and conditions. More so, a newly appointed candidate may not be aware about the Rules and procedure which is required to be adhered to by the appointing authority and as such, blaming of the petitioners for accepting the offer of appointment is not at all maintainable. The respondent authority which is under public domain cannot be allowed to indulge such conduct which has frustrated not only the affairs

of public authority but has also denied the equal opportunity of the present petitioners in their employment. As has been observed by the Hon'ble Apex Court in the case of M. Nagaraj(Supra) under Article 14 of the Constitution equality of treatment is an objective test but not the test of intention.

13]. For the foregoing reasons and discussions above, this Court is of the considered opinion that the petitioner has make out a prima facie case to justify interference into the matter by invoking the writ jurisdiction. As a result, the writ petition is allowed. The respondent authority is hereby directed to treat the service of petitioners to the posts of Scientist-B in regular posts, as has been given to other incumbents, mentioned above, with retrospective effect from the date of ^{offer of} ~~initial~~ appointment, dated 10.08.2010, by issuing an effective order as indicated above within a period of 15 days from the date of receipt of certified copy of this order.

No order as to costs.

The writ petition stands disposed of accordingly.

ra/m

JUDGE