

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

ITANAGAR PERMANENT BENCH(NAHARLAGUN)

1. WP(C)358(AP)2014

1. Shri Charu Nikla
S/o Late Charu Hipik
R/o village Karsingsa
PO/PS – Banderdewa
District - Papumpare, Arunachal Pradesh.
2. Smt. Bengia Kak
W/o Bangia Sibi
R/o village Karsingsa
PO/PS – Banderdewa
District - Papumpare, Arunachal Pradesh.
3. Smti Lichi Yari
S/o Late Lichi Eha
R/o village Karsingsa
PO/PS – Banderdewa
District - Papumpare, Arunachal Pradesh.

.....*Petitioners*

-Vs-

1. The State of Arunachal Pradesh represented by the Secretary, Department of Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.
2. The Chief Engineer(WZ), Department of Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.
3. The Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.
4. The Departmental Committee, Public Health Engineerig, constituted vide order No. PHECI/NLG/E-87/2009-10, represented by its Chairman.
5. Shri Kipa Doru(W/C Fitter), C/o Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.
6. Shri Techi Lahan(W/C Fitter T), C/o Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.

7. Shri Nabam Taring(W/C Fitter T), C/o Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.

.....respondents

By Advocates:

For the petitioners: Mr. Pritam Taffo
Ms. Jaya Doji
Mr. B. Yari
Mr. S. Tsering

For the respondents: Ms. Goter Ete, Addl. Senior Government Advocate
Mr. Tapak Uli
Mr. K. Posi
Mr. N. Yahi
M. Tatak
Mr. T. Naya

2. WP(C)361(AP)2014

1. Shri Obang Jomoh
S/o Shri Taming Jomoh
R/o village Karsingsa
PO/PS – Banderdewa
District - Papumpare, Arunachal Pradesh.
2. Smt. Sangte Jokio
W/o Shri Hopio Jokhio
R/o village Karsingsa
PO/PS – Banderdewa
District - Papumpare, Arunachal Pradesh.
3. Sri Tapik Lombi
S/o Sare Lombi
R/o village Karsingsa
PO/PS – Banderdewa
District - Papumpare, Arunachal Pradesh.

.....Petitioners

No-

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- 4.** The Departmental Committee, Public Health Engineering, constituted vide order No. PHECI/NLG/E-87/2009-10, represented by its Chairman.
- 5.** Shri Kipa Doru(W/C Fitter), C/o Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.
- 6.** Shri Techilahan(W/C Fitter T), C/o Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.
- 7.** Shri Nabam Taring(W/C Fitter T), C/o Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.
- 8.** Smt. Tamuk Yajik(W/C Fitter T), C/o Superintending Engineer, Public Health Engineering & W/S, Government of Arunachal Pradesh, Naharlagun.

.....respondents

By Advocates:

For the petitioners: Mr. Pritam Taffo,
Ms. Jaya Doji
Mr. R. Singhi,
Mr. B. Yari
Mr. S. Tsering,
Mr. T. Lamgu
Mr. H. Oka

For the respondents: Ms. Goter Ete, Addl. Senior Government Advocate
Mr. Tapak Uli,
Mr. K. Posi
Mr. N. Yahy,
Mr.M. Tatak
Mr. T. Naya

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 29.08.2018
Date of Judgment : 29.08.2018

JUDGMENT & ORDER(ORAL)

Heard Mr. P. Taffo, learned counsel appearing for the petitioners.

Also heard Ms. G. Ete, learned Addl. Senior Government Advocate, appearing on behalf of the State Respondents No. 1 to 4. None appeared on behalf of the private respondents No. 5, 6 & 7.

2. The petitioners, in both the petitions, preferred under Article 226 of the Constitution of India, have prayed for quashing of the impugned Departmental Promotion Committee (for short 'DPC') recommendation for appointment, dated 02.07.2013, whereby only the case of the private respondents were considered favorably and given promotion as Work-charge staff, depriving their seniors i.e. the petitioners. The petitioners have, therefore, prayed for a direction to the respondent authorities to give appointment to them as work-charge staff with retrospective effect from the date of appointment of the junior employees like the private respondents, herein.

3. The petitioners in WP(c)358(AP)2014, are presently working as casual employees in the Department of Public Health Engineering & Water Supply, Government of Arunachal Pradesh at Karsingsa Sub-Division. The petitioner No. 1, herein, joined the post of WI on 02.03.1998, whereas petitioners No. 2 & 3 joined the post of Mazdoor on 05.01.1999 and 24.03.1998, respectively. The private respondents No. 5 & 6 and 7, joined the posts of casual Mate and causal Fitter on 03.01.2003 & 06.01.2001 and 10.01.2002, respectively.

4. The petitioners in WP(C)361(AP)2014, are also working as casual employees in the Department of Public Health Engineering & Water Supply, Government of Arunachal Pradesh at Karsingsa Sub-Division. The petitioner No. 1, herein, joined the post of Chowkidar on 26.01.1992 whereas petitioners No. 2 & 3 joined the post of Mazdoor on 08.04.1997 and 21.06.1996, respectively. The private respondents No. 5 & 6 and 7, joined the posts of casual Mate and causal Fitter on 03.01.2003, 06.01.2001 and 10.01.2002, respectively.

5. The petitioners in both the petitions have contended that they came to know through the RTI that the names of the private respondents were recommended to the post of W/C

Fitter and W/C Mazdoor, vide DPC meeting conducted under the Chairmanship of private respondent No. 4 on 02.07.2013, but the names of the petitioners were not recommended by the said DPC for consideration. The cases of the private respondents No. 5, 6 & 7 were accordingly considered by the respondent authorities and they were duly appointed to the post of W/C(T) Fitter by superseding the petitioners, who were senior to them. According to the petitioners, the private respondents were much junior to the petitioners as their date of joining indicated. These appointments were made surreptitiously and by resorting to pick and choose method without considering the very fact of their juniority in service. It is contended that they came to know about the discrimination only after 1(one) year of their appointments.

6. It is the case of the petitioners that the petitioner No. 1 and petitioners No. 2 & 3, are getting consolidated pay of Rs. 6800/- and Rs. 5800/- per month, respectively. At present, W/C(T) Fitter i.e. private respondents No. 5 to 7, is drawing Rs. 16,686/- per month and other benefits and as such, it is more or less like a promotion for the casual employees, for which reason, the Department maintains a seniority list for the casual employees. Hence, the appointment to such posts has to be done by considering their seniority and work experience.

7. Being aggrieved by such biasness, the petitioner No. 1 on behalf of other petitioners in WP(c)361(AP)2014, approached the respondent No. 4/DPC to recommend the other six senior-most casual employees for appointment to the post of W/C.

8. The petitioners in both the writ petitions contended that as there is no dispute to the fact that they are being senior to the private respondents, the action of the respondent authority giving appointment to the private respondents to the post of W/C by superseding them is arbitrary, discriminatory and in contravention of articles 14 and 16 of the Constitution of India and further, such action is against the normal practice of the department.

9. In both the writ petitions, the State Respondents have filed their separate affidavits-in-opposition through the Executive Engineer (HQ), Office of the Public Health Engineering Department, Government of Arunachal Pradesh, Itanagar. However, it is noted that the contentions raised by the respondent authorities in their respective affidavit-in-opposition are identical except in respect of the joining dates of the petitioners.

10. In order to appreciate the case of the State Respondents, paragraph No. 3 of the affidavit-in-opposition is reproduced below:

"3(i). That Requests were flowing from various quarters like elected representatives, public leaders and above all the staffs from the PHE Department including that of Yupia Division for conduct of Departmental Promotion Committee (DPC) for filling up the vacancy of various category of W/C cadre posts. Earlier DPCs were conducted by the SE, Itanagar Circle, Naharlagun on 31.07.2006 & 29.11.2006. Accordingly, the DPC under the Public Health Engineering Department, Govt. of Arunachal Pradesh was constituted vide Order No. PHECI/Nlg/E-87/2009-10, Dtd. 21st January 2013 for selection of candidates for promotion from WC(T)/WC(Adhoc) cadre to WC(R) cadre, from casual staffs of various trades to WC(T) cadre, conversion of WC(Adhoc) cadre staffs to WC(T) cadre, regularization of retired and expired WC(T) cadre staffs for pensioner benefits, and conversion of few WC posts owing to administrative exigency.

ii) That the above issues were placed before the Departmental Promotion Committee (DPC) meeting on 2nd July'2013 for detailed deliberation and necessary consideration. The decisions taken in the DPC meeting may be seen at the Minutes of the DPC. After thorough examination of performance reports, seniority, feedback from the divisional/Sub-divisional officers, the DPC, recommended promotion of casual staffs against WC cadre posts left vacant due to retirement/expiry of WC cadre staffs. While giving due importance to the performance and seniority the committee decided to confer certain weightage to age/date of superannuation for the purpose of extending pensionery benefits by way of regularization in order of retirement so as to streamline the process of pension benefits etc. in the long run to WC category.

ii) That in the instant DPC, the cases of the respondent Nos. 5, 6 & 7 namely Sri Kipa Doru (appointed as W/C WI), Sri Tech Lahan (appointed as W/C Fitter) & Sri Nabam Taring (appointed as W/C Fitter) were also taken up alongwith few other casual category staffs under Yupia Division and were promoted from casual cadre to W/C (T) based on their age, performance, sincerity and trade-wise vacancy besides seniority and experience."

11. Apart from the above averments made by the State Respondents, it has been stated that regularization of casual category staff of W/C category is made as per the performance, sincerity, seniority, experience and availability of trade-wise vacant W/C cadre posts through conducting Departmental Promotion Committee (DPC).

12. According to the State respondents, the petitioners No. 1, 2 & 3 in WP(c)358(AP)2014, joined the PHED as casual labourers on 02.03.1998, 01.05.1999 & 24.03.1998, respectively and they are now working as skilled casual WI, unskilled casual Mazdoor & skilled casual Mazdoor, respectively whereas the respondents No. 5, 6 & 7 joined the PHED as casual labourers on 01.03.2003, 01.06.2001 & 01.10.2002, respectively and the first two respondents were working as skilled casual Mate, and the respondent No. 7 as unskilled casual Fitter respectively prior to their appointment to W/C cadre.

13. According to the State respondents, the petitioners No. 1, 2 & 3 in WP(c)361(AP)2014, joined the PHED as casual labourers on 26.10.1992, 04.08.1997 & 21.06.1996, respectively and they are now working as skilled casual Chowkidar, unskilled casual Mazdoor & unskilled casual Mazdoor, respectively whereas, the respondents No. 5, 6, 7 & 8, joined the PHED as casual labourers on 01.03.2003, 01.06.2001, 01.10.2002 and 21.01.1998, respectively and the Respondents No. 5 & 6 were working as skilled casual Mate, Respondent No. 7 was working as unskilled casual Fitter and the respondent No. 8 was working as unskilled casual Mazdoor, respectively prior to their appointment to W/C cadre.

14. It is the categorical averments of the respondents that the petitioners in both the writ petitions, never submitted any academic certificates which rendered them eligible for promotion to W/C. Furthermore, the respondent authorities have contended that holding of DPC is an official procedure and during the DPC sittings, cases of all the casual labourers as per their merit, were taken-up in the deliberations for consideration and due to limited vacancy of W/C cadre posts, regularization of respondent Nos. 5, 6 & 7 to W/C category as W/C Fitters (T), were made as per their age, performance, sincerity and trade-wise vacancy besides seniority and experience. According to the State respondents, in the DPC, not only the seniority, but the performance and sincerity of the petitioners and the respondents were given due consideration and necessary feedback were obtained from their controlling officer i.e. the Executive Engineer, Yupia Division. The Minutes of the DPC were published immediately and appointment letters were issued accordingly to the said respondents on 15.07.2013 and if the petitioners got to know about the same, after a lapse of one year, the Department could not be faulted. The respective Executive Engineers were made members of the DPC to get the requisite reports on the performance and sincerity of the casual staff before taking a final decision on appointment to W/C cadre. It is emphasized that the Executive Engineers got the necessary feedback from their sub-ordinate officers like the AEs,

JEs, WIs, etc., and as such, no illegality, arbitrariness or discrimination has been resorted to by the DPC as contended by the petitioners while appointing the respondents to W/C cadre.

15. However, the respondent authorities, in their affidavit-in-opposition filed in WP(c)354(AP)2014, have admitted that the Department concerned did receive a letter from one of the petitioners namely Sri Charu Nikla, dated 22.08.2014, seeking cancellation of all the W/C appointments.

16. The State respondents in both the writ petitions have taken the common plea that the promotion/appointments from casual to W/C has been made as per trade-wise vacancy, seniority, merit and performance. However, to appreciate the matter, at hand, paragraph No. 3 of the additional affidavits of the State respondents, is quoted hereunder:

"3. That in the affidavit in opposition filed by the state, it is already mentioned that the promotion/appointments from casual to WC has been made as per tradewise vacancy and seniority, merit and performance. In case of Yupia Division there was only 6 nos. of vacancies 4 nos. WC fitter & 2 nos. of WC Mazdoors.

As already mentioned in the affidavit, promotion/appointments from casual to Work Charge been as per trade wise vacancy and seniority. Merit and performance. In case of Yupia Division there were 6 Nos. vacancies (4 nos. WC fitters and 2 nos. WC Mazdoors).

Trade of petitioner No. 1, Shri Charu Nikia is a Casual Work Inspector (WI). Since, there is no vacant post of WC (WI) under Yupia Division, his case could not be considered for promotion to work charge category.

2 (two) Nos. of casual mazdoors were promoted to Work Charge mazdoor as per vacancy of 2 nos. WC Mazdoor post under Yupia Division. They were as follows:-

- 1. Shri Debia Tabi (Date of joining is 12.06.1990 and he is senior than the petitioners 2 and 3).**
- 2. Smt. Tamuk Tajik (Date of joining is 21.01.1998 and she is senior than the petitioners 2 & 3).**

Respondent Nos. 5, 6 and 7 were promoted to the post of WC fitter against existing trade wise vacancies of 4 nos. Fitters alongwith Shri Tadar Taba (Date of joining is 05.01.1995).

Petitioners:-

No.	Name	Designation	Date Of Birth	Date of joining in	Age as on DPC	Length service as

				<i>service</i>	<i>(02.07.2013)</i>	<i>on DPC</i>
1	Shri Charu Nikia	Casual/WI	07.01.1981	02.03.1998	31 years & 6 months	15 years & 4 months
2	Smt. Bengia Kak	C/Mazdoor	05.01.1980	01.05.1999	33 years & 6 months	14 years & 2 months
3	Smt. Lichi Yari	C/Mazdoor	12.05.1968	24.03.1998	45 years & 2 months	15 years & 3 months

Respondents:-

No.	Name	Designation	Date Of Birth	Date of joining in service	Age as on DPC (02.07.2013)	Length service as on DPC
5	Shri Kipa Doru	WC fitter	03.03.1986	01.03.2003	27 years & 4 months	10 years & 4 months
6	Shri Techilahan	WC fitter	16.07.1978	10.06.2001	35 years	12 years & 1 months
7	Shri Nabam Taring	WC fitter	10.09.1975	01.10.2002	37 years & 10 months	10 years & 9 months

Respondent nos. 5 and 6 joined as casual fitters and later on re-designated as casual mate based on their performance although as per CPWD Work charged Establishment Manual 2000 the post of casual mate is a dying post and in their performance report they were considered as casual fitters only. Respondent No. 7 joined and continued to serve as casual fitter till his promotion to WC fitter."

17. The petitioners, by filing the affidavits-in-reply, in both the writ petitions, have contended that the Work Charge is simply a process of regularizing an employee in the Department from the casual post and as such, it cannot be termed as a promotional post and that there is no vacant post of Work Inspector/Work Charge and further, even if the petitioners are appointed as W/C Mazdoor, they will have regular post and their salaries would be higher. The alleged trade-wise test was just an eye-wash and no such test was ever conducted by the respondent authority.

18. In fact, the private respondents No. 5 & 6 in WP(c)354(AP)2014, were Fitters and later on, designated as casual Mate. However, they were not appointed as WC Mate, but WC Fitter, which goes to indicate that it was an action for regularization of service alone and posts are inter-changeable.

19. The petitioners' common grievance in both the writ petitions is that they have not been given work-charge post, despite having served for a considerable period as stated above in the Department. They have specifically contended that they have been working in the department regularly for more than 10/15 years without any break and they are entitled to be regularized under the law.

20. It has also been contended by the petitioners that they have obtained information through RTI on 06.04.2017 that they are working against the regular sanctioned posts and as such, their services ought to have been regularized at par with their juniors.

21. Heard the submissions of the learned counsel of both the sides and also gone through the documents annexed in support of the averments made in the writ petitions.

22. To arrive at a fair and just decision, Mr. Taffo, learned counsel for the petitioners, has placed before this Court, the decision rendered by this Court, vide order, dated 17.01.2017, passed in WP(c)482(AP)2011. A perusal of the same *per se* indicates that the matters at hand, are similar to the facts and circumstances averred in both the instant petitions except that the Department in the above-referred case is Department of Power, Government of Arunachal Pradesh.

23. The said order has traversed through the various laws as regards the service conditions of the petitioners who were serving as casual workers for the last 15(fifteen) years or more, continuously, without any break and without any aid of any order(s) of the Court. The Court after taking into consideration of the various case laws more particularly the ratio of the judgment rendered by the Hon'ble Supreme Court in ***Secretary, State of Karnataka v. Uma Devi & ors.***, reported in ***(2006) 4 SCC 1***, wherein, it has been laid down:-

"1. The employees who had been working continuously for more than ten years up to the date of the Judgment in Umadevi's case i.e. 10.04.2006, without the aid and benefit of any interim order/order(s) of any Courts or Tribunals, against sanctioned posts, although appointed in an irregular manner, are entitled to be regularized as an one-time measure. The exercise of one time measure is to be made department or institution wise and where appointments may have been made without any selection process, but from amongst duly qualified candidates and against sanctioned posts are to be considered as irregular appointments.

2. Employees engaged on a daily wage basis, and required to perform the same nature, quality and quantity of work as that of the regular employees working against sanctioned vacant posts, are entitled to a salary, at least in the minimum of the pay scale, that are paid to the regular employees.

3. Posts are required to be created by the State depending upon the need to employ people having regard to various functions that the State undertakes to discharge and that the posts are to be sanctioned and created by the State by a conscious choice on the basis of a rational assessment of the need. Any act on the part of the State compelling the employees to take a lesser wage and perform the

same work as is being done by the regular employees, by taking advantage of its dominant position and the unemployment scenario prevailing in the Country, would constitute an act of exploitative enslavement, which will also be a violation of Article 21 of the Constitution of India.

4. A stand on the part of the State respondent authorities that such temporary employees had accepted the offered employment at a lower wage on their own volition and that they are not working against any sanctioned posts, and as such, not entitled to a regular scale of pay, or regularization, is as such, not acceptable."

In view of the aforesaid position of the law, a direction is issued to the State respondent authorities to verify the credentials of the petitioners and arrive at a decision, firstly, as to whether they are working against any sanctioned posts and whether they are working for more than ten years as on the date of the Judgment of Umadevi's case, i.e. 10.04.2006 and whether they are continuing in service pursuant to any interim order from any Court or Tribunal. In the event, it is found that all the aforesaid three conditions are satisfied in respect of any of the petitioners, their services is to be regularized as an one time measure in consonance with paragraph-53 of the Judgment in Umadevi's case.

Secondly, on the other hand, it is found that any of the petitioners do not meet the aforesaid three conditions, more particularly, the condition that they are working against any sanctioned posts, their cases are to be determined as to whether they are performing the same nature, quality and quantity of work as is being performed by a regular employee working against the same/corresponding posts. If upon the determination, it is found that any such petitioner is performing the same nature, quality and quantity of work as is being performed by a regular employee working against the same/corresponding posts, such petitioners are to be paid the wages at the minimum of the pay scale as are being extended to the regular employees holding the same post.

Thirdly, if any such petitioner, upon the determination is found that they are not performing the said nature, quality and quantity of work as being performed by the corresponding regular employees, an appropriate and upgraded financial package be formulated for such employees commensurating with the nature, quality and quantity of work performed by them, and such financial package should not give the impression that the exploitative enslavement against such employees are still being perpetrated."

24. The instant matter being similar to the facts and circumstances of the above-referred case, this Court is of the considered opinion that identical direction, at par, to the direction

as made above by the Court in the said writ petition i.e. WP(c) 482(AP)2011, can be passed. It is hereby accordingly ordered.

25. As indicated in the said writ petition, it is further directed in this matter, that the aforesaid exercise be undertaken within a period of four months from the date of receipt of a certified copy of this order.

With the above direction, the writ petition stands **disposed of**.

JUDGE

Bhask