

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

WP(C)771(AP)2017

Miss Buru Yamung

C/o Shri Buru Yapa
1st Bn Police Headquarter,
Chimpu Itanagar, Papum Pare
District, Arunachal Pradesh.

.....*Petitioner*

- Versus -

1. State of Arunachal Pradesh
represented by the Chief Secretary.
2. The Secretary to the Governor,
Governor's Secretariat,
Government of Arunachal Pradesh.
3. The Selection Committee/
Board represented by its Chairman.
4. The Secretary, Administrative Reforms,
Govt. of Arunachal Pradesh, Itanagar.

.....*Respondents*

Advocates for the petitioner:

Mr. R. Sonar
Mr. L. Tapa
Ms. T. Devi
Mr. M. Basar

Advocates for the respondents:

Mr. D. Soki, GA

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : **26.09.2018**

Date of Judgment & order : **03.10.2018**

JUDGMENT AND ORDER(CAV)

Heard Mr. R. Sonar, learned counsel for the petitioner and Mr. D. Soki, learned Addl. Sr. Govt. Advocate appearing for all the respondents.

2. Facts of the case may be noticed at the outset. The respondent authorities vide advertisement dated 17.03.2015 (annexure-I) invited eligible candidates for filing up of 1(one) post of LDC amongst others in the Governor's Secretariat at Itanagar.

3. The petitioner responded to the advertisement by submitting her application. Consequently, written test was conducted on 27.06.2015 and thereafter, *viva-voce* was conducted on 18.07.2015. Despite lapse of a considerable period of time, since no results were declared in so far as the post of LDC was concerned, the petitioner submitted an application under the Right to Information(RTI) Act, 2015, seeking information from the respondent authorities concerned on 16.11.2016. In response to her application, the information sought for was given to the petitioner vide communication dated 01.03.2017, by the Deputy Secretary-cum-Public Information Officer, Governor's Secretariat at Itanagar. As per the information given to the petitioner, it was indicated that the post of LDC sought to be filled up, was an anticipated vacancy and it was proposed to be filled up as and when the incumbent occupying the post of LDC get promoted to the next higher post of UDC and that the Departmental Promotion Committee(DPC) to consider such promotion, was yet to be held. Besides this information, the petitioner was furnished with a copy of the statement showing the result of the selection process for the post of LDC,

wherein, the name of as many as 4 (four) candidates who appeared in the selection, were enlisted in order of merit. Furthermore, against the information sought by the petitioner through another RTI application dated 27.07.2017, the petitioner was furnished with the Meeting Minutes dated 10.03.2017, by which the incumbent occupying the post of LDC in the Governor's Secretariat was recommended for promotion to the post of UDC. The petitioner, upon learning about the status of the selection, served a legal notice to the respondent No. 2 on 31.07.2017 to consider her promotion on the basis of the selection that was held pursuant to the advertisement dated 17.03.2015. The respondent authority concerned, against the legal notice, gave reply to the petitioner through her counsel on 21.08.2017, informing her that sufficient time had lapsed since the selection and since vacancy of the LDC post did not occur as was anticipated, the advice of the Department of Administrative Reforms was being sought vide letter dated 09.05.2017, on the validity of the recommendation of the selection committee.

4. Not being satisfied with the response, the petitioner, thereafter, submitted a legal notice to the respondent authorities for considering her in terms of the selection that was initiated pursuant to the advertisement dated 17.03.2015. However, not getting any relief, the petitioner has filed the present writ petition.

5. Mr. R. Sonar, the learned counsel for the petitioner, submits that a bare perusal of the advertisement dated 17.03.2015, shows that the recruitment was sought against vacant posts and out of which, one post was meant for LDC. Therefore, the response given to the RTI application of the petitioner, dated 16.11.2016, on 01.03.2017, is only contrary to the advertisement itself. He, submits that even presuming that the vacancy was only anticipated, without admitting to the same, it is clear that the DPC which was held on 10.03.2017, recommended the incumbent holding the post of LDC to the post of UDC. Therefore, the respondent authorities by acting upon the selection process, initiated pursuant to the advertisement dated 17.03.2015, ought to have immediately considered the petitioner against the said vacancy.

6. The learned counsel by referring to the affidavit-in-opposition filed by the respondent No.2 on 12.03.2018, further submits that the contention of the respondent authorities concerned in the affidavit is not at all tenable. He submits that reliance has been made on the Office Memorandums issued by the Department and Administrative Reforms on 29.07.2016 and 24.11.2015. He submits that a bare perusal of the two Office Memorandums which is said to have been issued, pursuant to the judgment rendered by this Court in WP(C) No. 348(AP)2010 (Shri Khoda Sanjay & Anr. Vs. State of Arunachal Pradesh & Ors.), would go to show that the same relates to filling up of vacancies over and above the advertised vacancies and also relates to a clarification on the issuance of final list for direct recruitment. He submits that the present case pertains to non-publication of the merit list that was prepared pursuant to the selection held on 27th June and 18th July of 2015. As per the merit list furnished to the petitioner, she has been placed at serial No. 1 and therefore, there is no question of applying the above Office Memorandums referred to.

7. The learned counsel in support of his contention has relied upon the decision in the case of ***Prem Prakash v. Union of India & ors.*** reported in ***1984 Supp (1) SCC 687.***

8. The learned counsel further submits that despite the stand taken by the respondent authorities in the above manner, the select list has to be valid as on date since the process of selection has not come to its logical conclusion.

9. Mr. D. Soki, learned Addl. Sr. Govt. Advocate appearing for the State respondents, by referring to the prayer made by the petitioner, submits that the petitioner has sought for a direction to the respondent authorities to appoint her against the post of LDC in accordance of the recommendation of the selection committee but, however, at the same time, she contends that the selection process has not been completed. He submits that even in the absence of any instruction with regard to the life of the select list, the same will ordinarily be valid for a period of one year only. Therefore, the petitioner cannot insist upon being considered for appointment to the post of LDC based upon the selection

held way back in the year 2015. If the same is done, all those deserving and eligible candidates will be deprived of an opportunity to apply for the post.

10. Learned Addl. Senior Government Advocate further submits that the petitioner does not have any indefeasible right to insist upon her consideration for the post of LDC in terms of the merit list which otherwise, has not been published. Therefore, as none of the Fundamental Rights of the petitioner is curtailed and the case projected by the petitioner being without any substance, the writ petition should be dismissed.

11. The learned State counsel in order to substantiate his submission has placed his reliance on the decision of the Apex Court rendered in ***Girdhar Kumar Kumar Dadhichi & anr. V. State of Rajasthan & ors.*** reported in ***(2009) 2 SSC 706.***

12. I have heard the submissions advanced by the learned counsel for the rival parties and I have also perused the materials available on record including the authorities relied upon by the parties. The question to be decided is as to whether the petitioner can be considered for her appointment against the post of LDC, that was advertised on 17.03.2015 and in terms of the result that was prepared on 18.07.2015 in order of merit.

13. The advertisement dated 17.03.2015, was for one vacant post of LDC amongst other posts mentioned therein. The respondent authorities concerned despite conducting the written examination as well as *viva-voce* pursuant to the advertisement did not declare the results. From the merit list prepared, the petitioner obtained the highest marks. The materials on record reveal that the post of LDC was advertised in view of the anticipated vacancy, since the incumbent occupying the post of LDC was due to be considered for promotion to the next higher post of UDC shortly. But as the DPC could not be held for promotion to the post of UDC as anticipated, the respondent authorities could not declare the selection result for the LDC post. However, the DPC was held ultimately on 10.03.2017 by which the incumbent occupying the post of LDC, was recommended for promotion to the post of UDC. Despite materialization of

the anticipated vacancy, the respondent authority did not undertake any step for filling up of the vacancy in the post of LDC by declaring the result of the selection process held pursuant to the advertisement dated 17.03.2015. No material has been placed before this Court with regard to the validity period for the merit list. The respondents have no doubt, sought reliance upon the Office Memorandums which however, are in respect of panel list and not on merit list. The issue, however, here is that despite the preparation of the merit list, the same has not been notified till date.

14. The Apex Court in the case of *Prem Prakash* (supra) has relied upon the Notification issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, dated 08.02.1982, wherein, it was provided that there will be no limit in the period of the validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through the departmental competitive examination. Thus, it was held that if the selected candidates are available from the previous list, there should either be no further recruitment until those candidates are absorbed or in the alternative, vacancies which are declared for the subsequent years, should take into account the number of persons who are already in the list of selected candidates and who are still awaiting appointment.

15. The issue here in the present case is somewhat different. The only selection process undertaken was in the year 2015 and pursuant to which a merit list was prepared but not notified.

16. The Apex Court in the case of *Girdhar Kumar Dadhich* (supra) took into consideration the case of *State of Rajasthan v. Jagdish Chopra, (2007) 8 SCC 161*, wherein it was held that the recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules of recruitment and all recruitments, therefore, are required to be made in terms thereof. Although, the State Rules did not specifically provide for the period for which the merit list should remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Thus, vacancies which arose in the subsequent years, could be filled up from the select list prepared in

the previous year and not in other manner. The Apex Court also went to observe that even otherwise in absence of any rule, ordinarily the period of validity of select list should be one year.

17. The above decision relied upon by the learned State counsel to the present case, in my considered opinion is not applicable inasmuch as, no select list has been notified by the respondent authorities and there is only one selection unlike the case of *Prem Prakash* (supra).

18. In that view of the matter, the select list cannot be said to have a validity period of one year. The writ petition was filed by the petitioner on 22.11.2017 and this Court, vide order dated 23.11.2017, while issuing notice, directed the respondent authorities not to issue fresh advertisement against the post of LDC in question, till her claim was determined by the Court. Therefore, in terms of the aforesaid projection, the admitted position is that the post of LDC has not been filled up till date.

19. Considering the case in its entirety, I am of the considered opinion that the petitioner has made out a case for the interference of this Court. In the result, the respondent authorities more particularly the respondent No. 3, is directed to publish the select list for the post of LDC as was prepared pursuant to selection made in terms of the advertisement dated 17.03.2015. After such publication, the petitioner shall be considered for her appointment to the post of LDC under the establishment of the respondent No. 2. The entire process shall be completed as expeditiously as possible and preferably, within a period of one month from the dated of receipt of a certified copy of this Order.

20. This writ petition accordingly stands **disposed of** as allowed. No Cost.

JUDGE

Victoria