

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

ITANAGAR PERMANENT BENCH, NAHARLAGUN

WP(C) 319 (AP)/2016

- 1: Sri Tabak Hanker, (Research Officer),
Department of Social Justice, Empowerment and Tribal Affairs,
Government of Arunachal Pradesh, Naharlagun,
Residence of Sinki Park Colony, Itanagar,
Papumpare District, Arunachal Pradesh

....Petitioner

-VERSUS-

- 1: The State of Arunachal Pradesh represented by the Chief Secretary,
Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
- 2: The Secretary/Commissioner, Department of Social Justice,
Empowerment and Tribal Affairs, Government of Arunachal Pradesh,
Itanagar.
- 3: The Director, Department of Social Justice Empowerment and Tribal
Affairs, Government of Arunachal Pradesh, Naharlagun.
- 4: Sri Yumlam Kaha, Deputy Director, Social Justice Empowerment and
Tribal Affairs, Government of Arunachal Pradesh, Naharlagun.

....Respondents

BEFORE
HON'BLE MR. JUSTICE NANI TAGIA

Advocate for the Petitioner : Shri J. Hussain, T. Changriang
Advocate for the Respondents : Ms. K. Wangmo, G.A. for State respondents,
Shri J. Jini, for respondent No. 4.

Date of hearing & Judgment : 11-06-2019

JUDGMENT & ORDER(ORAL)

None appears for the petitioner on call.

Heard Ms. T. Wangmo, learned Jr. Govt. Advocate for the respondents No. 1, 2 & 3 and Mr. J. Jini, learned counsel appearing for respondent No. 4.

2. This writ petition has been filed by the petitioner challenging the impugned order dated 21.12.2015 issued by the Secretary, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh on 31.12.2015 vide Memo No. DSJE-90/2014(E)/284 by which the respondent No. 4 has been permanently absorbed to the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh with retrospective effect from the date of his joining in the post on deputation on 01.10.2014.

3. The facts leading to filing of the present writ petition maybe stated has follows:

(i). The writ petitioner, who has been working as Research Officer on being promoted from the post of Superintendent in the Department of Social Justice, Empowerment and Tribal Affairs,

Government of Arunachal Pradesh since 15.01.2005 had on various occasions submitted representations to the respondent authorities for his promotion to the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh from the post of Research Officer.

(ii). The respondent authorities, however, without responding favorably to the prayer made by the writ petitioner for promotion to the post of Deputy Director had by an order dated 26.09.2014 issued by the Commissioner, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh vide Memo No. DSJE-23/2012(E)/3-12 appointed respondent No. 4, who was working as CDPO in the Department of Women and Child Development, Govt. of Arunachal Pradesh to the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh on deputation basis initially for a period of 1(One) year vice Shri Taw Tebin, who was appointed to the post of Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh, which was subsequently, extended for a further period of 1 (One) year vide order dated 06.10.2015 issued by the Secretary, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh vide Memo No. DSJE-23/2012(E)937. And eventually, the respondent No. 4 was permanently absorbed in the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh with retrospective effect from the date of his joining in the post on deputation on 01.10.2014 by the impugned order dated 21.12.2015 issued by the Secretary, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh vide Memo No. DSJE-90/2014(E)/284.

(iii). Aggrieved by the appointment of the respondent No. 4 to the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh, initially on deputation and the subsequent, order of permanent absorption, the writ petitioner had to approach this Court earlier by filing a writ petition being WP(C)No.69(AP)2016 which was disposed of by this Court by an order dated 15.02.2016, directing the petitioner to again file a fresh representation raising his grievance before the respondent authorities and the respondent authorities, thereafter, was directed to dispose of the said representation within 2(two) months by having due regard to the Recruitment Rule.

(iv). In pursuance thereof, the writ petitioner submitted a representation dated 18.02.2016 which was disposed of by a speaking order by the Chief Secretary, Government of Arunachal Pradesh on 15.04.2016, wherein, it was *inter-alia* mentioned that the petitioner does not possess minimum educational qualification of graduation as prescribed by the Office Memorandum dated 28.01.2014 issued by the Chief Secretary, Government of Arunachal Pradesh vide No. AR-74/2013.

(v). The writ petitioner, therefore, has again approached this Court by filing the present writ petition, wherein, it has been contended that there is a set of Recruitment Rules called "the Deputy Director (SW) Group-A, Recruitment Rules, 1998", which prescribes the manner and method of filling up the post of Deputy Director as 100% by promotion from the post of Research officer of the Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh having 3(three) years regular continuous service in the grade, failing which by transfer on deputation from

State/Central Govt. Organization holding analogous post for a minimum period of 3(three) years.

(vi). It is the further contention of the writ petitioner that he has been serving as a Research Officer in the Department since the year 2005 and therefore, is well qualified and eligible to be promoted to the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh but the respondent authorities ignoring the legitimate entitlement of the writ petitioner, had illegally appointed the respondent No. 4 initially on deputation basis and subsequently, permanently absorbed as Deputy Director in the Department vide the impugned order dated 21.12.2015, for which the same is liable to be set aside and quashed.

4. State respondents No. 1 to 3 have filed a counter-affidavit, wherein, it has been stated that the Government of Arunachal Pradesh took a policy decision to stream line the matter of promotion from Group-B to Group-A and fixed a basic Education Qualification as Graduation from a recognized university to be eligible and qualified for promotion from Group-B to Group-A post. Accordingly, the Memorandum No. AR 74/2013 dated 28.01.2014 was issued by the Chief Secretary, Government of Arunachal Pradesh fixing the minimum educational qualification as Graduation/Bachelor Degree from a recognized University for consideration of appointment from Group B to Group-A posts either by direct recruitment or on promotion with immediate effect. The said notification has been annexed as Annexure-A to the counter-affidavit filed by the State respondents.

5. By referring to the aforesaid notification dated 28.01.2014, Ms. T. Wangmo, the learned Jr. Govt. Advocate has submitted that the writ

petitioner could not have been promoted to the post of Deputy Director because of the lack of basic requirement of educational qualification as prescribed by the said Office Memorandum and therefore, there is no any illegality in denying promotion to the post of Deputy Director to the petitioner and also in absence of any other eligible candidates, the impugned absorption order dated 21.12.2015 was issued in respect of the respondent No. 4.

6. Respondent No. 4 has also filed a counter-affidavit, wherein, the respondent No. 4 has taken the same stand as have been taken by the State respondents in their counter-affidavit.

7. I have heard Ms. T. Wangmo, learned Jr. Govt. Advocate for the respondents No. 1, 2 and 3 as well as Mr. J. Jini, learned counsel for the respondent no. 4 and have also perused the materials available on record.

8. The fact that the writ petitioner has been working as a Research Officer in the Department of Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh since 15.01.2005, is not disputed. The Recruitment Rules pertaining to filling up of the post of Deputy Director (annexed as Annexure-H to the writ petition) provides that the post of Deputy Director shall be filled up 100% by promotion from the post of Research officer of the Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh having 3(three) years regular continuous service in the grade, failing which by transfer on deputation from State/Central Govt. Organization holding analogous post for a minimum period of 3(three) years. Thus, it is evident from the mandate of the Rules that the post of Deputy Director is required to be filled up from amongst those Research Officers who have served in the Department for 3 (three) years regular and continuous service. It is only in

the absence of any Research officer in the Department having 3(three) years regular and continuous service in the grade that the appointment of Deputy Director by way of transfer on deputation from State/Central Govt. Organization holding analogous post for a minimum period of 3(three) years could be resorted to. There is no any other qualification prescribed under the Rules for appointment or promotion to the post of Deputy Director.

9. On perusal, the Office memorandum dated 28.01.2014 issued by the Chief Secretary, Government of Arunachal Pradesh, which has been relied upon by the State respondents, is a general Office memorandum fixing basic educational qualification as graduation from a recognised university for promotion to the Group-B and Group-A post. In the said Office memorandum, after having taken the decision to fix the basic educational qualification of graduation for promotion to Group-B to Group-A post, it was further provided that the said decision be brought to the notice of all the Ministries/Department/Organisations under the Government of Arunachal Pradesh for strict compliance and directed to initiate proposal for amendment of the existing Service Rules or Recruitment Rules to insert the educational qualification (Graduation and Bachelor Degree) from a recognised university in place of earlier qualification prescribed.

However, in terms of the office memo dated 28.01.2014 no any amendment to the Recruitment Rule pertaining to the Deputy Director, Social Justice, Empowerment and Tribal Affairs Department is stated to have been carried out. In the absence of any corresponding amendments being made in the related Recruitment Rules, the decision taken vide Office memorandum dated 28.01.2014 prescribing the minimum educational qualification as graduation for promotion to the Group-B and Group-A posts, which is an executive order issued by the Chief Secretary,

Government of Arunachal Pradesh cannot be, in the considered view of this court, superimposed over and above the Recruitment Rules.

10. The Recruitment Rule pertaining to the Deputy Director, Social Justice, Empowerment and Tribal Affairs Department having prescribed method of filling up the post of Deputy Director from Research Officer of the Department of Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh having 3(three) years regular and continuous service in the Grade; and, the writ petitioner having been working as Research Officer in the Department since the year 2005, in the considered view of this Court, is legitimately entitled to be considered for promotion to the post of Deputy Director in accordance with the Recruitment Rules.

11. By not considering the case of the writ petitioner for promotion to the post of Deputy Director and instead appointing the respondent No. 4 on deputation initially for the period of 1(one) with an extension for another year vide order dated 26.09.2014 and 06.06.10.2015, respectively and eventually, permanently absorbing the respondent no. 4 in the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh with retrospective effect from the date of joining to the post in deputation on 01.10.14, in the considered view of this court, cannot be sustained in law, inasmuch as, the impugned order of absorption dated 21.12.2015 had been issued regardless of the legitimate entitlement of the writ petitioner to be considered for promotion to the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh in accordance with law as prescribed under the Deputy Director(SW) Group-A Recruitment Rules, 1998.

12. For the reasons and discussions made herein above, the impugned order dated 21.12.2015 issued on 31.12.2015, vide Memo No. DSJE-90/2014(E)284 by the Secretary, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh is hereby set aside and quashed with a further direction to the respondents, more particularly the respondent No. 2, The Secretary/Commissioner, Department of Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh to consider the case of the writ petitioner for promotion to the post of Deputy Director, Social Justice, Empowerment and Tribal Affairs, Government of Arunachal Pradesh in accordance with "the Deputy Director (SW) Group-A, Recruitment Rules, 1998".

13. Accordingly, the writ petition is **disposed of** in terms above.

14. No cost.

JUDGE

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