

GAHC040008752015



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

**Case No. : WP(C) 14/2015**

1:YIMO GEYI  
PRESENTLY SERVING AS ASSISTANT ENGINEER, RURAL WORKS SUB-  
DIVISION, BASAR, PO/PS BASAR, DIST. WEST SIANG, AP

VERSUS

1:THE STATE OF A.P.  
REPRESENTED BY THE SECRETARY RWD, GOVT. OF AP, ITANAGAR

2:THE SECRETARY RWD  
GOVT. OF AP  
ITANAGAR

3:THE UNDER SECRETARY  
RWD  
GOVT. OF AP  
ITANAGA

**Advocate for the Petitioner** : MrD Panging

**Advocate for the Respondent** : GA

**BEFORE**  
**HONBLE MR. JUSTICE PRASANTA KUMAR DEKA**

**JUDGMENT**

**Date : 04-12-2019**

Heard Mr. D. Panging, learned counsel for the petitioner and also heard Mr.  
G. Tarak, learned Standing Counsel RWD.

**2.** The present petitioner was arrayed as the respondent No. 3 in the WP(C) 115(AP)/2001 filed by one *Shri Punyo Tangu* as the petitioner. In addition to the present petitioner, one *Shri Rido Allo* was also arrayed as the respondent No. 4. The petitioner in the said earlier writ petition was a Graduate Engineer holding the post of Junior Engineer and on the other hand, the respondent Nos. 3 and 4 were Diploma Holders but were holding the posts of Junior Engineers. The petitioner therein was aggrieved because of out-of-turn promotion to the said respondent Nos. 3 and 4 in violation of the Rules. The Diploma Holders are entitled to be in the consideration zone for promotion to the post of Assistant Engineer after continuous service of 8 years and on the other hand, a Graduate Engineer requires 5 years length of service as the Junior Engineer. The said writ petition was allowed in favour of the petitioner therein holding as follows:

*"For the aforesaid reasons, the recommendation of the respondents 3 and 4 by the DPC as well as the appointment order dated 30.03.2001 issued in favour of the respondents 3 and 4 are hereby set aside and quashed. The respondents are directed to consider the case of the petitioner for promotion. Since the petitioner is already holding the post of Assistant Engineer his case may be considered for regularization in the post and this shall be done within a period of 2(two) months from the date a copy of this order is served on the respondent No. 2, the Secretary, Rural Works Department(RWD), Govt. of Arunachal Pradesh."*

The present petitioner and the other affected respondent No. 4 in WP(C) 115(AP)/2001 were not served with the notices in the said writ petition.

**3.** Accordingly, being aggrieved by the said order which was passed on 23.03.2004 Writ Appeal No. 08(AP)/2007 was filed after taking the necessary leave from the appellate Court by the present petitioner and the respondent No: 4 therein the writ petition No.115(AP)/2001.

The said appeal was allowed vide order dated 25.04.2011 by holding as

follows:

*“But unfortunately it was not pointed out to the learned court that promotions for the appellants are not to be considered by treating them as Junior Engineer as the appellants were serving as Technical Assistants where shorter qualifying service of 3 years is prescribed under the Recruitment Rules. If these aspects were brought to the notice of the learned Single Judge, perhaps a different view would have been taken in the writ proceeding. But since appropriate notice of the writ petition was not given to the appellants and the judgment was given ex-parte against respondent Nos. 3 and 4, we deem it appropriate to interfere with the order passed by the learned Single Judge and to remand the case for a fresh adjudication in light of the contention advanced before us.*

*Consequently the impugned judgment and order dated 23.03.2004 is set aside and the matter is remitted for a fresh consideration by the learned Single Judge. It is ordered accordingly.”*

4. After the remand WP(C) 115(AP)/2001 was taken up for its disposal and vide order dated 06.12.2012 the writ petition was dismissed. The Learned Single Judge held as follow while dismissing the writ petition:

*“Here in this case, the vacancies arose in this year 1997, when the Recruitment Rules for the post of Assistant Engineer (Civil) in RWD on 24.10.1997 was applicable. At the relevant year, the private Respondent Nos. 3 and 4 were Technical Assistants. By the time when the DPC met, they had already completed 3 years of qualifying service. Although the post of TA was abolished in the year 2000, since the vacancies arose in the year 1997, the Rules laid down in the year 1997 will be applicable in the case of private Respondent Nos.3 and 4.*

*In view of the above, this writ petition stands dismissed. There shall be, however, no order as to costs.*

*Connected records/files, be handed over to the office of Senior*

*Government Advocate, Arunachal Pradesh, forthwith."*

5. After the order dated 23.03.2004, the present petitioner along with the Respondent No. 4 in WP(C) 115(AP)/2001 were reverted from the post of Assistant Engineer (Civil) to their original post of Junior Engineer (Civil) vide order No. RWD/Sectt-28/89 dated 31.05.2004. On remand and dismissal of WP(C) 115(AP)/2001, the petitioner along with the said respondent No. 4 in the said writ petition were reinstated vide order dated 20.12.2013 passed by the Secretary, RWD, Government of Arunachal Pradesh. In the said order the petitioner along with the said respondent No. 4 were given the following benefits which is reproduced hereinbelow.

*"Now therefore in compliance of the Hon'ble High Court order dated 06.12.2012 in WP(C) 115(AP) 2001, the Governor of Arunachal Pradesh is pleased to re-instate the promotion of Shri Yimo Geyi and Shri Rido Allo to the post of Assistant Engineer(Civil) from the date of their initial promotion issued vide order No. RWD/Sectt-28/99 dated 30.03.2001."*

6. The petitioner being aggrieved because of the fact that no arrears were allowed to be admissible during the period of reversion filed this writ petition claiming the back wages for the period 31.05.2004 to June 2007.
7. Mr. D. Pangging, learned counsel for the petitioner submits that for no fault on the part of the petitioner he was allowed to suffer by an order passed by this Court inasmuch as the Hon'ble Division Bench in Writ Appeal No. 08(AP)/2007 set aside the order and remanded the same for a decision in the writ petition No. 115(AP)/2001. After hearing all the parties including the present petitioner the said writ petition was dismissed which clearly shows that the findings given by the learned Single Judge in absence of the present petitioner was passed on some

different footings. As such once the order of dismissal of WP(C) 115(AP)/2001 and subsequent upholding of the said dismissal order by the Hon'ble Division Bench, the petitioner is entitled for the back wages which he claimed in the present writ petition.

- 8.** Mr. G. Tarak, learned Standing Counsel on the other hand referring to the affidavit-in-opposition filed by the respondent Nos. 1, 2 & 3 supported the stand taken therein that as the petitioner did not work as the Assistant Engineer during the said period from 31.05.2004 to June 2007 as such, relying on the principles of '*no work no pay*' he supported the stand taken by the respondents.
- 9.** I have given due consideration to the submissions of the learned counsel. In my considered opinion, the present issue involved can be considered on the principle of restitution where an order passed by a competent Court is varied or reversed in any other proceedings.
- 10.** On the basis of the said principle and its application in the present factual matrix, it is found that the petitioner was reverted to the post of Junior Engineer from the promoted post of Assistant Engineer because of the order passed in WP(C) 115(AP)/2001 dated 23.03.2004 and that too in his absence. Subsequently in the said writ petition itself, the promotions of the present petitioner along with the other respondent No. 4 therein were upheld to be valid and on the basis of the said findings the writ petition was dismissed. This itself amounts to variance of the earlier order passed by the learned Single Judge and under such circumstances, duty is cast on the Court to pass appropriate order which includes payments of the due amount which are consequential on such variation of the order. In the present Case admittedly there is a variance in the order passed by the Court in WP(C) 115(AP)/2001. I found substantial force in the claim of the petitioner and as such I am inclined to grant the relief sought for by the petitioner in this writ petition. The respondents are directed to pass appropriate order in view of the

observations made in this writ petition and disburse the amount due arising out of the back wages to the petitioner within a period of 3 months from the date of receipt of a certified copy of this order along with the writ petition and annexures annexed to it.

- 11.** This writ petition accordingly stands disposed of in the terms directed above. No costs.

**JUDGE**

**Comparing Assistant**