

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

WP(c) 261(AP)2014

Sri Monotosh Chakraborty
S/o Lt. I.C. Chakraborty
Resident of Ananya Apartments,
Ghosh Para, Kaikhali, PO- Airport,
Kolkata - 700052, West Bengal.

.....Petitioner

-Versus-

1. State of Arunachal Pradesh represented by the Secretary,
Rural Works Department, Govt. of A.P, Itanagar.
2. The Chief Engineer, Rural Works Department, Government of
Arunachal Pradesh, Itanagar.
3. The Superintending Engineer, Rural Works Department,
Government of Arunachal Pradesh, Itanagar.
- 4. Sri Arunava Chattopadhyay, 32/A/6 Suren Sarkar Road,
Belegkata near Subash Sorovar, Calcutta - 700010.**

.....Respondents

Advocates for the Petitioner : Mr. Dicky Panging
Mr. Duge Soki
Mr. Vijay Jamoh
Ms. D. Tamuk
Ms. E. Perme
Mr. M. Doji

Advocates for the Respondents: Ms. Goter Ete, Addl. Sr. Govt. Advocate

**:::BEFORE:::
HON'BLE MRS.(DR.) JUSTICE INDIRA SHAH**

Date of hearing : **25.08.2015**
Date of Judgment & Order : **25.08.2015**

JUDGMENT & ORDER (ORAL)

Heard Mr. Dicky Panging, learned counsel for the petitioner. Also heard Ms. Goter Ete, learned Addl. Senior Government Advocate, for State Respondents No. 1 to 3.

2. By filing this petition, under Article 226 of the Constitution of India; the instant petitioner has challenged the validity and legality of order, dated 04.09.2013, issued by the Secretary, RWD, Government of Arunachal Pradesh, Itanagar, whereby he has not been considered for promotion to the post of Assistant Soil Conservation Officer(ASCO, in short), on the ground that there were no vacancies against the un-reserved quota. The petitioner had earlier approached this Court and this Court, while disposing of the writ petition being WP(c)153(AP)2011, vide judgment & order dated 04.01.2012, directed the respondent authorities to re-convene a Departmental Promotion Committee(DPC) to consider the case of the petitioner and private Respondent No. 4, for promotion to the post of Assistant Soil Survey Officer (now re-designated as ASCO), earlier held by the private Respondent No. 4, within a period of 4 months w.e.f. 04.01.2012. Accordingly, a DPC was held on 04.09.2013 but the case of the petitioner was not considered on the ground that ASCO vacancy was not available against un-reserved quota. The Respondent No. 4 who is junior to the petitioner, was promoted to the said post and therefore, the petitioner filed a writ petition viz. WP(c) 416(AP)2005 and this Court, vide judgment & order dated 13.05.2009, on the basis of earlier judgment passed by the Division Bench in WA 30(AP)2007; set aside the impugned promotion order of the private Respondent No. 4 and thereby directed the State Respondents to consider the case of the petitioner for his promotion to the post of ASCO along with other eligible officers in the next Departmental Promotion Committee(DPC) in terms of the said Division Bench's order. Thereafter, the petitioner was promoted to the post of ASCO, vide order dated 27.07.2009, on officiating basis only.

3. In the earlier **WP(c) 153(AP)2011**, filed by the instant petitioner, this Court, in **Paragraphs No. 24** and **25**; observed, as under:

"24. The promotion of Respondent No. 4 and that of Sri Prasanta Kr. Roy having been set aside by this Court, two resultant vacancies arose in the post of Assistant Soil Survey Officer. These two posts which had consequently fallen vacant could not be said to be posts meant for APST as per reservation roster as it was held by the above two persons(both non-APST) and it was also not the stand of the respondents in the previous proceedings. It appears that

against the resultant vacancy of Sri Prasanta Kr. Roy, Sri M. K. Chandra, was promoted. When he had gone on deputation, the respondents filled up the deputation vacancy by the petitioner. thus, the post held by the Respondent No. 4 remained undisturbed though his promotion was held to be illegal by this Court and was set aside. The specific averment of the petitioner in his rejoinder affidavit that the respondents have allowed Respondent No. 4 to continue as Assistant Soil Survey Officer at Tawang despite his promotion being set aside, has not been controverted.

25. From the above, it becomes evident that the case of the petitioner for promotion to the post of Assistant Soil Survey Office is required to be considered against the post earlier held by Respondent No. 4, which vacancy has arisen following setting aside of the promotion of Respondent No. 4. Therefore, the DPC was required to be consider the case of the petitioner as well as Respondent No. 4 for promotion to the post held by the Respondent No. 4 but the same was not done. In such circumstances, the aforesaid exercise is required to be redone by the DPC confining the consideration to the petitioner and the Respondent No. 4. Whether the Respondent No. 4 can be considered at all in view of not serving in the feeder post of Soil Survey Assistant (SSA) (now re-designated as Senior Soil Conservation Assistant) as was held by this Court in the earlier round of litigation, is a matter which may be considered by the Court."

4. It is evident from the aforesaid judgment that vacancy arose because the promotion of private Respondent No. 4 who also belonged to un-reserved category, was set aside and the respondent authorities were directed to hold the Departmental Promotion Committee(DPC) and to consider the case of the petitioner as well as the private Respondent, to the post so held by the said Respondent No. 4.

5. No plea was taken in the earlier writ petitions that the post held by the private Respondent No. 4 falls under the reserved category.

6. In spite of several orders passed by this Court, in the earlier writ petitions; the respondent authorities without holding any Departmental Promotion Committee(DPC) promoted the petitioner, on officiating basis, violating the directions of this Court and although the promotion order of private Respondent No. 4, was set aside by this Court in the earlier writ petitions, however, he has been allowed to hold the said post.

7. The promotion of private Respondent No. 4 was also challenged by one Sri Mani Kumar Chandra in WP(c) 484(AP)2001, and vide judgment & order dated 04.05.2005; it was held by this Court, that the impugned promotion order was issued illegally, violating the Recruitment Rules and hence, it was set aside and quashed.

8. In Writ Appeal being **WA No. 30(AP)2007**, so preferred by the private Respondent No. 4; the judgment passed by the learned Single Judge was upheld by the Division Bench of this Court, and it was held in **Paragraph No. 7**, as under:

"7. Thus, a survey of the relevant Recruitment Rules indicates that the Soil Survey Assistant/Technical Assistant(Soil) are equivalent posts and the next promotional post from the post of Soil Survey Assistant/Technical Assistant(Soil) is the post of Assistant Soil Survey Officer/Subject Matter Specialist(Soil). No other Recruitment Rules could be produced by any of the parties to the appeal, which indicates otherwise. In such circumstances, what transpires is that the present appellant as well as the Respondent No. 7, in the said writ petition, were promoted to the posts of Assistant Soil Survey Officer/Subject Matter Specialist(Soil)/directly from the post of Soil Survey Assistant(Soil Conservation)/Research Assistant without being first promoted to the post of Soil Survey Assistant/Technical Assistant(Soil). In these circumstances, the observations made by the learned Single Judge that the Respondents No. 6 and 7, were given double promotion from the posts of Soil Survey Assistant(Soil Conservation) to the post of Soil Survey Officer, without being first promoted to the feeder post of Soil Survey Assistant/Technical Assistant(Soil), cannot be said to be an erroneous finding."

9. In view of the above, the impugned order dated 04.-09.2013 issued by the Secretary, RWD, Government of Arunachal Pradesh, Itanagar, is hereby set aside and quashed.

10. Consequently, the respondent authorities are hereby directed to consider the case of the instant petitioner for promotion to the post of ASCO which was held by the private Respondent No. 4(a non-APST candidate) in view of the fact that in several writ petitions, the respondent authorities were directed to comply with the orders of this Court.

11. However, it is seen that inspite of properly complying with the directions of this Court, the respondent authorities have, in fact, invited litigations after litigations from the instant petitioner. Taking a serious note of the same, it is hereby directed that the respondent authorities shall pay a penalty of Rs. 5,000/-, as cost, to the Registry of Gauhati High Court Itanagar Permanent Bench, Naharlagun, which shall, in turn, deposit, to the Arunachal Pradesh State Legal Aid Services/Cell.

12. With the above directions, this writ petition stands disposed of.

JUDGE

Bikash