

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

WP(C) 94 (AP)/2014

1. **Shri Tapiyar Moyong,**
S/o Late Tapor Moyong, JE (EM)
Pangin EM Division, East Siang District,
Arunachal Pradesh.
2. **Shri Nani Aka,** S/o Nani Gyati, JE (EM),
Hawai EM Division, District-Anjaw,
Arunachal Pradesh.
3. **Miss Rupa Mimi,**
D/o Mekhe Mimi, JE(EM)
O/f DHPD, Itanagar,
Papum Pare District,
Arunachal Pradesh.
4. **Shri Rukjit Raji Tamin,**
S/o Lt. Taruk Raji, JE (EM), Ziro Division,
District-Lower Subansiri,
Arunachal Pradesh.
5. **Shri Oki Dai,** S/o Lt. Ongil Dai,
JE (EM) Panging Division,
Upper Siang District,
Arunachal Pradesh.
6. **Shri Gyati Modo,** S/o Gyati Taming,
JE (EM) Aalo EM Division,
West Siang District,
Arunachal Pradesh.
7. **Shri Yomto Ete,** S/o Tayom Ete,
JE (EM) Aalo EM Division,
West Siang District,
Arunachal Pradesh.

8. **Shri Momar Bagra**, S/o Tamo Bagra,
JE (EM), Aalo EM Division,
West Siang District,
Arunachal Pradesh.

9. **Shri Habung Opo**, S/o Habung Tani,
JE (EM), Ziro EM Division,
Lower Subansiri,
Arunachal Pradesh.

10. **Shri Nangram Dawa**, S/o Nangram Taha,
JE (EM), Ziro EM Division,
Lower Subansiri,
Arunachal Pradesh.

11. **Shri Roto Loder**, S/o Roto Tajo,
JE (EM), Tezu EM Division,
Tirap District,
Arunachal Pradesh.

.....**Petitioners.**

By Advocates:
Mr. D. Panging,
Ms. L. Lombi,

-Versus-

1. **The State of Arunachal Pradesh through the Secretary, Department of Power,**
Govt. of Arunachal Pradesh,
Itanagar,

2. **The Joint Secretary, Department of Power,**
Govt. of Arunachal Pradesh,
Itanagar.

3. **The Chief Engineer (Civil),**
Department of Hydro Power Development,
Govt. of Arunachal Pradesh,
Itanagar.

4. **Shri Chuku Heley, JE (E),**
Ziro Electrical Division,
Department of Power,
Govt. of Arunachal Pradesh
5. **Shri Rajeev Panyang, JE (E),**
Naharlagun Electrical Department,
Govt. of Arunachal Pradesh

.....Respondents.

By Advocates:

Mr. R.H.Nabam Sr. GA for respondent Nos. 1 to 3.

Mr. C. Modi, for resp. Nos.4 & 5

BEFORE

THE HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 17-02-2015.

Date of Judgment & Order: 05-03-2015

JUDGMENT & ORDER (CAV)

By filing this petition under Article 226 of the Constitution of India, the petitioners have prayed for setting aside the impugned order No. PWRS/E-1399/2006/Vol-I dated 11-12-2013 by which the private respondent Nos. 4 & 5, namely, Shri Chuku Heley, Junior Engineer (E), and Shri Rajeev Panyang, Junior Engineer (E), from the Department of Power to the post of Assistant Engineers (EM) were employed on deputation against the direct recruitment quota in the Department of Hydro Power Development in total contravention of the relevant recruitment rules, which does not provide for making such appointment on deputation.

2. The fact of the case, in brief, is that the petitioners are Bachelor of Engineering Degrees in various streams from different colleges in India and at present, they are working as Junior Engineers in the Department of Hydro Power Development. The newly created Department of Hydro Power Development was carved out from the Department of Power. The Government of Arunachal Pradesh, in exercise of the powers conferred by the proviso under Article 309 of

the Constitution, has framed the common Recruitment Rules to the posts of Assistant Engineer, Group-B in the Department of PWD, Power (Electrical), RWD, IFC, PHE, Power (Civil) etc under the Government of Arunachal Pradesh, called as "the Recruitment to the posts of Assistant Engineer Rules, 2005". By the said rules, the Department of Hydro Power Development was not reflected", though the said rules are being followed by all the works Department of the Government of Arunachal Pradesh.

3. The petitioners further state that there are 19 sanctioned posts in the cadre of Assistant Engineers in the Department. When the Department of Hydro Power Development was newly created Engineers from the ENM wing of the Rural Works Department were brought to man the Department at the initial stage. The recruitment rules of 2005 was brought into force on or from 19-12-2005 which provides two modes of appointment to the post of Assistant Engineers, 50% by promotion and 50% by direct recruitment. It is also stated in the petition that in year 2010, two Junior Engineers, namely, H. Ete and D. Gogoi were brought on deputation in the higher post of Assistant Engineer in violation of the Recruitment Rules, but they were not permanently absorbed in the Department till date. The grievances of the petitioners was that they have been deprived from their further promotional avenues, if the respondent authorities are initiated a move for bring the Junior Engineers from the other works department on deputation in the post of Assistant Engineers, which will be in violation of the Rules against the direct recruitment, as they are qualified for taking part in any recruitment process for selection to the post of Assistant Engineers in the Department. In that regard, they have filed a representation before the Secretary (Power), Govt. of Arunachal Pradesh ventilating their grievances and requested him not to bring any officers from the other works departments in violation of the relevant Recruitment Rules. Subsequently, vide order dated 11-12-2013 (Annexure-4 to the petition) brought two more Junior Engineers, namely, Shri Chuku Heley, Junior Engineer (E), and Shri Rajeev Panyang, Junior Engineer (E), from the Department of Power to the post of Assistant Engineers (EM) on deputation in violation of the aforesaid Rules, 2005. Hence, this writ petition.

4. Heard Mr. D. Panging, learned counsel for the petitioners and also heard Mr. R. H. Nabam, learned Senior Govt. Advocate, appearing for official respondent Nos. 1 to 3. Mr. C. Modi, learned counsel appearing on behalf of the private respondent Nos. 4 & 5.

5. The basic contention of the learned counsel for the petitioners, Mr. Panging, is that the appointment of the private respondent Nos. 4 & 5 by the impugned order dated 11-12-2013 to the post of Assistant Engineer (EM) cannot be given by the authorities concerned by flouting the Recruitment Rules, whereas, the Recruitment to the posts of Assistant Engineer Rules, 2005 shows that Government has made no scope to appoint any person(s) on deputation. The said rules prescribed that (i) 50% by promotion and (ii) 50% by direct recruitment from the select list prepared on the basis of written examination followed by viva-voce test by the Commission. In support of his submissions, a reliance has been placed on the decision in the case of **Suraj Parkhash Gupta and Others Vs. State of J. & and Others**, reported in (2000) 7 SCC 561, wherein, in para 28 & 29, it has been observed as follows:

"28. The decisions of this Court have recently been requiring strict conformity with the Recruitment Rules for both direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment....."

29. Similarly, in the State of Orissa Vs. Sukanti Mohapatra, (1993) 2 SCC 486, it was held that though the power of relaxation stated in the rule was in regard to "any of the provisions of the rules", this did not permit relaxation of the rule of direct recruitment without consulting the Commission and the entire ad hoc service of a direct recruit could not be treated as regular service....."

6. it has also been averred that the recruitment can only be made as per Article 309 of the Constitution and any deviation from the rules is not permitted.

The learned counsel, in support of his submissions, has relied upon the decision of the case reported in **(2006) 4 SCC 1 [Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others]**, wherein, it has been observed in Para 6, as follows:

“6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under

the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution, which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

7. In the instant case, neither the Government has exercised its discretion without any basis nor can they justify their action in any other manner. The only plea of the respondents is that the appointment of the private respondents has been made by invoking the relaxation provisions as provided in the Govt. Notification dated 15-12-2005 (Annexure-2 to the petition).

8. It has been vehemently argued that the plea of the respondents that has been disclosed in the affidavits-in-opposition regarding invoking the power and relaxation, but there is nothing to show that while relaxing the rules with respect to any class or category of persons, there was consultation with the Selection Board as has been mentioned in the Rules. In the above mentioned case laws, the relaxation of rules is not permitted and cannot be exhausted unless indicated above.

9. In reply, the learned Senior Govt. Advocate, Mr. Nabam, has contended that there is no merit in the case of the petitioners in view of the fact that they have not yet been completed their qualified service for promotion as has been prescribed neither in the Rules nor by the impugned order of appointment of the private respondent Nos. 4 & 5 will block the avenue of promotion of the petitioners. There is nothing to debar the posting/appointment of private respondents on deputation though the rules are silent in this aspect. The appointment of two private respondents is given only for the public interest as there was no person in the Hydro Power Development to fill up the post of Electro Mechanical Wing and as such, those two incumbents were appointed purely on temporarily basis on deputation with specific terms and conditions as mentioned below:

“* The deputation is purely against the direct recruitment quota/short term deputation vacancy of AE(E&M) and as and when direct recruits select list is received from the

APPSC/deputationists are returned whichever is earlier; they shall be reverted back to their parent Department of Power.

- **The deputation is purely temporary interim arrangement in exigency of work and they shall not claim absorption in the grade of Assistant Engineer (EM) in future.**
- **The appointing Authority reserves the right to discontinue the deputation appointment, at any time, without assigning any reasons whatsoever.**
- **The other terms and conditions which are not specified herein shall be governed by the relevant rules and orders as are in force from time to time.**

10. The State respondents, in their affidavit-in-opposition, have stated that due to exigency of works and on receiving an instruction from the Finance Department to fill up the vacant post within one year or otherwise else post shall be abolished. Therefore, to avoid the abolition of the vacant post, Shri Chuku Heley and Shri Rajeev Payeng were appointed as Assistant Engineer (EM) on deputation initially for a period of two years on the ground that the petitioners have not attained the requisite length of service for eligible for promotion to the post of Assistant Engineer (E & M). Their appointment on deputation is no way affected the right of the petitioners, who are not yet qualified for such promotion to the higher prospect. It has also been assailed that as per the Govt. Notification, no post can be remain in unfulfilled for more than two years and due to which, the present two private respondents have been engaged/appointed to the post of Assistant Engineers (EM) on deputation to avoid the hurdle.

11. Regarding the contention of the petitioners that they could have been given the chance of direct recruitment, it has been submitted by the learned counsel for the respondents that as there was no any syllabus and recruitment rules are framed and the petitioners are still not qualified for promotion. Till now, the process for direct recruit could not be adhered to and in due course, when the syllabus will be prepared, it will be sent to the Government for approval and only thereafter, regular direct appointment can be made.

12. Similarly, it has been contended by Mr. C. Modi, learned counsel for the private respondent Nos. 4 & 5 that the submissions of the petitioners is

totally derailed and the Government has already clarified its status by the impugned appointment letter that the post is purely temporary in nature and they have to revert back to the parent department after two years. The Government can frame its own policy decision to meet the exigency of service, in the interest of justice, when the rule is silent about certain conditions. So, in the case in hand, the Government has filled up two vacant posts of Assistant Engineers (EM) by appointing two private respondents on deputation only in the interest of justice and there is no mala fide on the part of the official respondents. The petitioners simply apprehended that the private respondents may be absorbed in the Department of Hydro Power Development whereas no fundamental right has been violated. The private respondents were also deprived of drawing the pay and allowances on deputation due to order so passed by the Court so they have prayed for vacating the interim order passed by this Court.

13. In reply to the argument put forward by the respondents, the learned counsel for the petitioners has clarified that no promotion is claimed by the petitioners and it is the case about non-adhering to the standing rules as framed by the Government while appointing the private respondent Nos. 4 & 5, the petitioners, who are working as Junior Engineers in the Department can be adjusted in the post by giving the petitioners, an opportunity to appear before the Selection Board through due selection process and in that manner, their legal right has been affected. It has also been submitted by the learned counsel for the petitioners that none of the submissions of the respondents can be taken into account as nothing has been reflected in their affidavits-in-opposition regarding the notification that post is to be filled up without lying vacant for two years, otherwise, it will be abolished. No such document has been placed in their pleadings; the respondents cannot canvass such point at this stage of argument.

14. From the records and arguments, it is apparent that no specific recruitment rules have yet been framed by the State in the Department of Hydro Power Development. The Recruitment to the posts of Assistant Engineer Rules, 2005, framed under Notification dated 15th December, 2005, stated to be followed by the other Engineering/Works Departments, wherein, in Column 11, it has been specifically mentioned that method of recruitment whether by direct recruitment

or by deputation/transfer—(i) 50% by promotion and (ii) 50% by direct recruitment from the select list prepared on the basis of written examination followed by viva-voce test by the Commission and in Column 12, in case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made--by promotion from amongst the Junior Engineers of the department who have 8 years of regular service for diploma holders and 5 years of regular service for degree holders in the grade provided that irrespective of seniority in the cadre of Junior Engineer, promotion to the post of Assistant Engineer shall be considered in order of seniority of completion of respective qualifying services. According to the petitioners, the appointment of the private respondent Nos. 4 & 5 has been made in total contravention of the relevant recruitment rules which does not provide for making such appointment on deputation.

15. It has been specifically mentioned in the affidavit-in-opposition filed by the Official respondents that the private respondents were appointed as Assistant Engineer (EM) on deputation initially for a period of two years against the direct recruitment quota as an interim arrangement to avoid abolition of vacant post with due approval of the Higher authority and also to state that the petitioners have not attained the requisite length of service eligible for promotion to the post of Assistant Engineer. It is further stated that two posts were meant for direct recruitment quota and not from promotion quota and hence, they have nothing to do with these said post even if they attained the qualifying length of service. In the affidavit-in-opposition, filed by the private respondent Nos. 4 & 5, wherein, it is categorically stated that the petitioners are not yet come to the considerable zone of promotion as they are hardly 5 years in temporary service and for direct recruitment the mere statement of having requisite qualification without supported by the documents the petitioner failed to establish their locus standi to claim the post. The learned counsel for the petitioners has not controverted the averments made in the affidavits-in-opposition by filing an additional affidavit/reply affidavit.

16. It is a settled position that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. Therefore, when statutory rules are framed under Article 309 of the Constitution, which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

17. In the instant case, the petitioners are aggrieved by the appointment of private respondent Nos. 4 & 5 to the post of Assistant Engineer (EM) on deputation and apprehends that their further promotional avenues will be curtailed by bringing them from other works departments and reveals that the petitioners are qualified for taking part in any recruitment process for selection to the post of Assistant Engineers in the Department. The learned counsel for the petitioners further submits that it is the apprehension of the petitioners that the private respondent Nos. 4 & 5 may be regularised their service depriving them from the opportunity of promotion in the post. On the other hand, the learned State Counsel has submitted that the appointment of the private respondent Nos. 4 & 5 is purely on short deputation or a temporary interim arrangement in exigency of work and they shall not claim absorption in the grade of Assistant Engineer (EM) in future. The order of appointment itself indicates the conditions that as and when direct recruits select list is received from the APPSC/deputationists are returned whichever is earlier; they shall be reverted back to their parent department of Power. The appointing authority reserves the right to discontinue the deputation appointment, at any time, without assigning any reasons whatsoever.

18. In view of the materials on record, it flows that the State respondents by way of affidavit have asked that only to avoid the difficulty of abolishing the aforesaid posts, for not fulfilling the same, interim arrangement was made to avoid the hurdle and there was no mala fide on the part of the respondents. The terms and conditions also clearly indicate the intention of the respondent

authority that the private respondent Nos. 4 & 5 will no way absorb in the posts on deputation and they have to revert back to their original post. In that view, there is also no scope to hold that the promotional avenues of the petitioners have been affected nor the legal right of the petitioners has been infringed.

19. In absence of any mala fide on the part of the respondent authority while employing the private respondent Nos. 4 & 5 nor they are appointed permanently, this Court is not inclined to set aside the appointment order of deputation to the private respondent Nos. 4 & 5 so passed by the respondent authority. However, such type of conduct of the respondent authority cannot be allowed to permit for all the time. The respondent authority concerned is hereby directed to regularize the posts by holding examination/interview as per norms by direct recruitment. It is the ardent necessity on the part on the respondent authority to prepare syllabus etc. for holding examination/interview for direct recruitment and it cannot be an excuse, they cannot resumed idle on the subject.

20. In this pretext, the respondent authorities i.e. respondent Nos. 1, 2 and 3 are directed to hold the examination/interview for the said posts as per norms or recruitment rules, framed by the State Government by affording opportunity to the petitioners to sit in the examination/interview, if so desired and found eligible, within a period of 6 (six) months from the date of receipt of a certified copy of this judgment and order.

21. With the above observations and directions, this writ petition stands disposed of. No costs.

JUDGE