

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

WRIT PETITION (C) NO. 97 (AP) OF 2010

Shri Nehru Lochung,
S/o Shri Japo Lochung,
Permanent R/o Papu Hill,
Near SE, PWD Office, Papumpare,
P.O. & P. S.- Naharlagun,
District- Papumpare,
Arunachal Pradesh.

... Petitioner

-Versus-

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Department of Power, Govt. of
Arunachal Pradesh, Itanagar.
2. Superintending Engineer,
Department of Power,
Electrical Circle – 1, Naharlagun.
3. The Executive Engineer (Elect),
Naharlagun Electrical Division,
Department of Power, Nirjuli.
4. Smti Pasang Drama Khumo,
Khalasi (Peon), C/o Executive
Engineer (Elect), Naharlagun
Electrical Division Department
Of Power, Nirjuli.
5. Smti. Nabam Yarup, Khalasi (M/R),
C/o Executive Engineer (Elect),
Naharlagun Electrical Division
Department of Power, Nirjuli.
6. Smti Nabam Rija, Khalasi (Peon),
C/o Executive Engineer (Elect),
Naharlagun Electrical Division,
Department of Power, Nirjuli.
7. Smti Jumdik Potom, Khalasi (M/ R),
C/o Executive Engineer (Elect),
Naharlagun Electrical Division,
Department of Power, Nirjuli.

... Respondents

P R E S E N T
HON'BLE MR. JUSTICE B.D.AGARWAL

For the petitioner : Mr P Taffo,
Ms N Danggeng,
Mr T Gyadi.

For the Respondents : Ms M Tang, GA,
Arunachal Pradesh,
Mr D Boje.

Date of hearing : 23.02.2011

Date of Judgment and order : 23.02.2011

JUDGMENT AND ORDER (ORAL)

This writ application under Article 226 of the Constitution of India, has been filed praying for a writ in the nature of certiorari so as to set aside the Orders dated 17.08.2009 and 19.08.2009, passed by the Superintending Engineer (Coord), APEC-I, Naharlagun, whereby the said authority has appointed respondent Nos. 4, 5, 6 and 7 as Khalasis. At the same time, the petitioner is also praying for directing the respondents to consider his appointment to a suitable post as work-charged employee, adhering to the seniority list of casual staff.

2. Heard Mr T Gyadi, learned counsel for the writ petitioner as well as Ms M Tang, learned Government Advocate for the respondent Nos. 1, 2 and 3. The private respondents were represented by Mr D Boje, learned counsel. I have also perused the pleadings of both the parties.

3. During the course of hearing, the learned Government Advocate also produced one file containing few applications and orders of appointments. The file does not contain any order sheet so as to justify the merit of the private respondents for their appointments.

4. In the affidavit of respondent Nos. 1, 2 and 3, it has been stated that the Superintending Engineer has the discretion to appoint work-charged employees directly or he can also choose from enrolled casual labourers as per the necessity. Along with the writ petition and the affidavit of the private respondents, a series of Trade-wise Seniority List of casual staff for the year 2008, have been annexed. Mr Boje, learned counsel for the private respondents submitted that the writ petitioner is in the list of Line-men, whereas, the respondents have been appointed as Khalasis. In other words, it was the submission of the learned counsel for the private respondents that the appointing authority was not obliged to take into consideration the seniority position of the writ petitioner since he is in a different trade.

5. At the same time, the Seniority Lists also do not show that the respondents have better claims over the writ petitioner. To consider the rival claims and also to examine whether the State respondents had actually picked up respondent Nos. 4 to 7 *dehors* to the seniority and in violation of the procedure of giving public employment it would be just and proper to reproduce the standing of the writ petitioner and the private respondents in their respective trades in the following Chart:

Sl. No.	Name of the petitioner/respondent	Trade	Date of appointment as Casual Labourer	Educational Qualification	Appointed as:
1.	Sri Nehru Lochung	Lineman/ Helps	22.06.1998	Class - IX	--
2.	Smt Pasang Drema Khumo (Respondent No.4)	Bill Asstt.	12.08.1998	Class - V	Khalasi (Peon)
3.	Smt Nabam Yarup (Respondent No.5)	Telephone-Attendant	29.12.1998	Class - VII	Khalasi (M/R)
4.	Smt Nabam Rija (Respondent No. 6)	Peon	06.05.1999	Class - VIII	Khalasi (Peon)
5.	Smt Jumdik Potom (Respondent No.7)	Peon	10.05.1999	Class - X	Khalasi (M/R)

6. As per the above chart the writ petitioner was senior to the respondents at the time of their initial appointments as casual labourers. Besides this, from the documents annexed with the writ petition and the counter affidavits it is gathered that Power department is maintaining separate Seniority Lists for Peons, Linemen, Electricians,

Helps, Meter-Readers, Telephone-Attenders, Chowkidars and so on. In the said List, the names of respondent Nos. 7 and 6 stand at Serial Nos. 27 and 28 respectively in the list of Peons. However, the affidavit of the respondents is silent to clarify whether all the 26 (twenty-six) Peons, senior to the respondent Nos. 7 and 6 have been appointed.

6.1. Name of respondent No. 5 is in the list of Telephone Attenders and not in the list of Helps or Peons. However, instead of appointing any casual labourer from the List of Helps and Peons the respondents have picked up the respondent No. 5 to appoint her as Khalasi (M/R). I would also like to add here that in the list of Meter-Readers there are 88 casual labourers and some of them are also possessing ITI Diplomas and Higher Secondary Education qualification. Strangely, all these persons have been ignored for appointment as Meter-Readers in preference to respondent Nos. 5 and 7.

6.2. There is another Seniority List of casual staff for Linemen, which also includes Helps. Ordinarily, Helps can also be appointed as Peons. However, instead of appointing any person from the list of Helps, the State respondents have appointed respondent Nos. 4 and 6 as Khalasi (Peons). Before her appointment as Peon, the respondent No. 4, Smt P Drema Khemu, was working as Bill Assistant and she stood at Serial No. 4 in the Seniority List. I do not find any justification how the said woman has been appointed as Peon, overlooking the seniority of Helps, Peons and other Bill Assistants. It is true that respondent Nos. 6 and 7 were engaged as Peons on casual basis but their seniority positions were 28 and 27 respectively. The affidavit of the State respondents has not made it clear whether all the Peons, senior to respondent Nos. 6 and 7 have been regularly appointed. Be that as it may, in the said Seniority List, the writ petitioner's name stands at Serial No. 149 and he was initially appointed as Helps but the petitioner was, in due course, engaged as a Lineman. If that is so, there should have been no difficulty to appoint the writ petitioner either as Peon or Metre-Reader. In this way, the State respondents have not only ignored the educational qualification as well as the seniority, but they have also picked up the private respondents at random without any justification.

7. In their affidavit, the respondent Nos. 1, 2 and 3 have taken a plea that the private respondents were appointed under the discretionary quota of direct appointment. It is true that under Regulatory Scheme, issued from the Office of Chief Engineer (T&D), Department of Power, the Officers can fill up vacancies in casual roll and make adhoc promotions and appointments. However, there is no indication that this scheme has the approval of the Government. Besides this, there are no guidelines of adhoc promotions and appointments as well as number of persons that can be appointed by the Officers in the Power Department.

8. In the case of **Secretary, State of Karnataka and Others –Vs- Umadevi (3) and Others**, reported in (2006) 4 SCC 1, the Hon'ble Supreme Court has made it clear that any temporary, contractual, casual, daily wage or adhoc employees have no indefeasible rights to be absorbed or regularized or to be made permanent. In other words, the Apex Court has held that all public employments should be made in a transparent manner otherwise it will infringe the constitutional guarantee enshrined under Articles 14 and 16 of the Constitution of India. The relevant observations of the Hon'ble Supreme Court are reproduced below:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.....”.

9. The aforesaid view has been thoroughly approved by the Apex Court in the case of **State of Bihar _Vs- Upendra Singh;** (2009) 5 SCC 65. In this case, Their Lordships were examining termination of service of the respondent, who was appointed without following minimum rules of public employment. Adverting to the ills of **“Spoils System”** of America, Their Lordships have observed that the framers of the Constitution had rightly considered the efficacy of introducing Article 309 in the Constitution to regulate public employment. Relevant observations are extracted below:

“38. With a view to insulate the public employment apparatus in independent India from the virus of spoils system, the framers of the Constitution not only made equal opportunity in the matter of public employment as an integral part of the fundamental rights guaranteed to every citizen but also enacted a separate part i.e. Part XIV with the title “Services under the Union and the States”. Article 309 which finds place in Chapter I of this part envisages enactment of laws by Parliament and the State Legislatures for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Proviso to this article empowers the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and the Governor of a State or such person as he may direct in the case of services and posts and in connection with the affairs of State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts till the enactment of law by the appropriate legislature.”

10. While approving the termination order the Hon’ble Supreme Court reiterated the necessity and importance of advertisement of vacancies through public media, in addition to calling names from concerned Employment Exchange, followed by a selection process. There are many other judicial pronouncements, wherein the practice of giving appointments in Government departments, without wide publication of the vacancies has been deprecated, as it offends Articles 14 and 16 of the Constitution of India. Equally, adopting the practice of pick and choose in public employment and giving jobs through backdoor has also been condemned.

11. In the case before me, the pleaded case of the State respondents is that the respondent nos. 4, 5, 6 and 7 have been appointed under direct recruitment quota. If that was so, the respondents were incumbent to publish the vacancies so that eligible candidates could have opted for the job. However, neither the vacancies were advertised nor any sort of selection process was adopted. In this way, the appointments of respondent Nos. 4 to 7 neither fulfils the conditions of absorption laid down in the case of **Umadevi (Supra)** nor stands the judicial test of direct appointments due to inherent lack of transparency and fairness in the appointment of private respondents.

12. For the reasons stated above, the writ petition stands allowed. The impugned orders are hereby set aside. As a corollary, the appointments of respondent Nos. 4, 5, 6 and 7, are hereby set aside. However, I refrain from giving any direction to the respondents to consider the appointment of the writ petitioner at this stage, since his case will be considered as and when there is vacancy and on the basis of seniority and merit.

13. The Registry is directed to forward a copy of this Judgment to the Chief Secretary, Government of Arunachal Pradesh, for information. It is advisable that the Government re-examines the Regulatory Scheme prepared by the Chief Engineer (T&D), Department of Power, so that the element of arbitrariness in appointments is eliminated.

14. Although it was a fit case to award exemplary costs against respondent Nos. 1, 2 and 3, for appointing private respondents without any semblance of transparency and adopting any selection procedure, I refrain from imposing any cost since the writ petitioner also could not make out a case of mandamus for his appointment.

JUDGE