

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH.

WP(C) NO. 329 (AP) 2009

Shri Suraj Kumar Pandey
S/o Shri Shyam Sunder Pandey,
Assistant Engineer, Nampong
Sub-Division, Arunachal Pradesh
Public Works Department,
Camp-Jairampur,
Arunachal Pradesh.

.....Petitioner.

By Advocates:

Mr. K. Tari,
Mr. W. Opo.
Mr. K. Tama

-Versus-

1. State of Arunachal Pradesh to be represented by Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. Commissioner-cum-Secretary, Public Works Department (PWD), Govt. of Arunachal Pradesh, Itanagar.
3. The Chief Engineer, Western /Eastern Zone, Public Works Department, Govt. of Arunachal Pradesh, Itanagar.
4. Er. Gamnya Padu, Executive Engineer, PWD, Capital Division-B(IV), Itanagar, Arunachal Pradesh.
5. Er. Limi Niri, Executive Engineer, Along Circle, PS-Along, District West Siang, Arunachal Pradesh

.....Respondents.

By Advocates:

Ms. G. Deka, Addl. Sr. GA
Mr. K. Ete, for Resp. Nos. 4& 5.

BEFORE
THE HON'BLE MR. JUSTICE P.K. MUSAHARY

Date of hearing : 20-08-2010

Date of Judgment & Order : 20-08-2010

JUDGMENT & ORDER
(ORAL)

Heard Mr. K. Tari, learned counsel for the petitioner. Heard also Ms. G. Deka, learned Addl. Sr. Govt. Advocate for the respondent Nos. 1 to 3 and Mr. K. Ete, learned counsel appearing for private respondent Nos. 4 & 5.

2. The short facts of this case are that the petitioner and the private respondent Nos. 4 & 5 applied for appointment to the posts of Assistant Engineers in the Public Works Department (PWD) and they along with others were recommended by the by the Arunachal Pradesh Public Service Commissioner ('APPSC' in short) vide letter No. PSC-108/88 dated 20.03.1989. The petitioner's name figured at serial no. 7 in the merit list while the names of the private respondent nos. 4 & 5 figured at serial no.2 and 6 respectively in the separate waiting list prepared by the APPSC scheduled tribe category who were found at the lower positions of the separate list prepared by the APPSC. The private respondent Nos. 4 & 5 were appointed as Assistant Engineer vide order dated 19.04.1989 and they joined in their service on 02.05.1989. Although, the petitioner's position in the merit list was at serial no.7, he was appointed only on 12.06.1989 by an order dated 12.06.1989 and joined his service on 21.07.1989.

3. The provisional seniority list of Assistant Engineers was published on 25.09.1990 wherein the petitioner's name found place at serial no.135 while the names of the private respondent nos. 4 & 5 appeared at serial nos. 142 and 146 respectively. Thereafter, a final gradation list was published on 01.03.1999 showing the petitioner at serial no.126 and the private respondent nos. 4 & 5 at serial nos. 116 and 120 respectively. The petitioner was shown junior to the private respondents in the final gradation list and being aggrieved, he made a representation on 06.04.2001 before the authorities concerned. He submitted several reminders, the last being 21.07.2009 but to no effect. Having no other

alternative, the petitioner has filed the present writ petition for a direction to the respondent authorities to restore the seniority position of the petitioner by maintaining and placing his name above the private respondent Nos. 4 & 5 in the seniority list and to give all the consequential service benefits as per his entitlement.

4. Mr. Tari, learned counsel appearing for the petitioner submits that the respondent authorities have committed gross illegality and irregularity in fixing the seniority of the petitioner below the private respondent-nos. 4 & 5 whose merit positions at the time of selection, were far below the position of the petitioner. According to him, the seniority should be fixed as per the merit position in the select list. In support of his contention, Mr. Tari has referred to a decision of the Apex Court in **Suresh Chandra Jha Vs. State of Bihar and Others**, reported in (2007) 1 SCC 405. He particularly relies on the observation made in Para-8 which is quoted below:-

"8. Since there was no rule in operation, obviously the ranking in the merit list was to decide the respective seniority. The ratio in **Chairman, Puri Gramya Bank Case** has full application to the facts of the case. The appellant's claim that he was to be treated as senior to Respondent No.8 was rightly accepted by the learned Single Judge. Unfortunately, the Division Bench did not address itself to the specific question and has placed undue stress on Respondent No.8 having joined earlier."

5 Mr. Ete, learned counsel appearing for private respondent Nos. 4 & 5 strongly disputes the contention of the petitioner and submits that the present writ petition is liable to be dismissed on the ground of inordinate delay in approaching the court of law. In support of his submission, the learned counsel for the private respondent Nos. 4 & 5 refers to a decision rendered by the Supreme Court in **B.S. Bajwa Vs. State of Punjab**, reported in (1998) 2 SCC 523 wherein it has been held that the question of seniority should not be reopened after a lapse of reasonable period because it results in disturbing the settled position which is not justifiable and the inordinate delay alone is sufficient to decline interference under Article 227 of the Constitution. Likewise, he submits that in **State of Haryana and Others Vs. Ajay Walia (Ms)**,

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reported in (1997) 6 SCC 255, wherein the writ petition was filed seeking appointment after 13 years of selection, held that repeated submission of representations does not furnish a cause of action and as such writ petition is not maintainable due to inordinate delay. Moreover, it is submitted by Mr. Ete that the present writ petition is liable to be dismissed for non-joinder of necessary parties namely, the persons who have been shown senior to the petitioner in the gradation list although they were below his position in the merit list prepared by the APPSC. In order to establish his submission, he cites the case of *Chief Conservator of Forests, Govt. of A.P. Vs. Collector and Others*, reported in (2003) 3 SCC 472.

6. I have carefully gone through the selection list prepared by the APPSC, the appointment letters/orders and the joining reports of the petitioner as well as the private respondent Nos. 4 & 5. Admittedly, the petitioner's position in the merit list is much above the position of the private respondent Nos. 4 & 5, yet the authorities concerned issued the appointment order to petitioner after about 2 months from the date of appointment of private respondent Nos. 4 & 5. In the counter affidavit filed by the State respondents, no explanation is offered as to why, although, the petitioner's merit position was at serial no.7, i.e. much above the position of private respondents, his appointment was issued two months after their appointments. In fact, the names of the private respondents were at serial nos. 2 & 6 in the waiting list due to their lower position in order of merit. It is really quite shocking and unfortunate that the candidates from the waiting list have been given priority over the better meritorious candidate like the petitioner in the merit list prepared by the APPSC. At the same time, the petitioner is also found in default while he joined in service only on 12-07-1989 although he was appointed on 12-06-1989. He has not explained why he joined after one month from the date of his appointment.

7. From the pleadings, it is found that the petitioner, without approaching the court of law, engaged himself in filing repeated representations before the authorities concerned. Moreover, he has not annexed any copy of the representations so submitted by him nor did he produce the copies of the representations at the time of hearing to convince the court that he submitted such representations. It has become an admitted

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position that he filed the present petition only on 02-08-2009 i.e. after a period of 10 years from the date of publication of the final seniority list on 01-03-1999 on which date, the cause of action arose. Such delay constitutes an inordinate delay and such inordinate delay makes the writ petition or any legal action liable to be dismissed on delay ground itself. The petitioner has shown his laches and negligence in approaching the Court. During such period of inordinate delay, it has settled the position and status of many officers in the cadre of Assistant Engineer and it has been submitted at the bar that some of them have already been promoted to the post of Executive Engineer and they are due for further promotion to the next higher grade. The law does not permit to unsettle the settled position amongst the officers/employees. In my considered view, although, the petitioner had a genuine grievance, the relief(s) sought for by him at such belated stage cannot be granted to unsettle the settled position and as such, the present writ petition is liable to be dismissed. Accordingly, the same stands dismissed. There shall be no order as to costs.


JUDGE

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