

## IN THE GAUHATI HIGH COURT

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

### ITANAGAR BENCH.

### WRIT PETITION(C) 46 (AP)/ 2010

Shri Dacha Bagang,  
Son of Shri Changran Bagang,  
Permanent resident of Laching-Bagang Village,  
PO-Chayang-Tajo, District- East Kameng,  
Arunachal Pradesh, presently residing at Seppa,  
Near Circuit House, Arunachal Pradesh.

.....*Petitioner.*

*By Advocates:*

*Mr. T. Son,, Mr. A. Rebe,  
Mr. D.Maidan,*

### **-Versus-**

1. The State of Arunachal Pradesh  
(Represented through the Commissioner, IT, Science  
and Technology), Govt. of Arunachal Pradesh,  
Itanagar.
2. The Deputy Commissioner,  
East Kameng District, Seppa,  
PO. Seppa, Arunachal Pradesh.
3. Miss, Jully Jomoh,  
D/o Late Apa Jomoh,  
C/o Smti Nyachi Jomoh, P.I.  
D.C. Office, Seppa, PO-Seppa,  
District-East Kameng, Arunachal Pradesh.

..... *Respondents.*

*By Advocates:*

*Ms. A. Mize, G.A. A.P.,  
Mr. T. Pertin, for Resp. No.3*

*rw*

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

Date of hearing : 14.09.2010

Date of Judgment & Order: 14.09.2010

JUDGMENT & ORDER

(ORAL)

Heard Mr. T. Son, learned counsel for the petitioner, Ms. A. Mize, learned Govt. Advocate, appearing for the respondent Nos. 1 & 2 and Mr. K. Tado, learned counsel for the private respondent No.3.

2. The petitioner, being selected by a selection committee, was appointed along with seven others as computer operator on contractual basis for a period of one year with a fixed monthly pay of Rs.5,500/- by the Deputy Commissioner, East Kameng District, Seppa vide his order dated 12-06-2002. He was thereafter along with others selected for undergoing induction training for Community Information Centre (CIS) operator scheduled to be held on 17-06-2002 to 27-06-2002 at Administrative Training Institute (ATI) at Naharlagun. He successfully completed the said training. Thereafter, an agreement/contract bond was signed on 30-01-2004 between the Deputy Commissioner, East Kameng District and the petitioner providing amongst others that the petitioner would serve the govt. on the terms and conditions laid down therein. His appointment was extended by signing similar agreement on subsequent occasion. On his application made, the Circle Officer-cum-BDO, CD/IRD Block, Chyangtajo, a no objection certificate (NOC) was issued to the petitioner to pursue further studies in master degree course till 30<sup>th</sup> June, 2009. He passed and obtained master degree in planning with specialization in Urban Planning in the year 2009. While he was pursuing further higher studies, the petitioner was appointed as LDC-cum-Computer Operator with posting at Changtajo in the scale of pay of Rs.3050-75-3090-80-4590/- p.m. on purely temporary basis on condition that he shall be on probation for a period of 2 years with effect from 1<sup>st</sup> April, 2008 vide office order dated 21-10-2008 issued

by the Commissioner (IT, Science & Technology), Govt. of Arunachal Pradesh, Itanagar. He accepted the aforesaid appointment.

3. The further order dated 04-01-2010 was issued by the aforesaid Director to the effect that the petitioner would continue to work as Computer Operator of Chayang Tajo. While the petitioner was on probation, some complaints were made against him and the same was disposed after inquiry into the matter and his pay and allowances withheld with effect from May, 2009 was released by an order dated 20-07-2009 issued by the said Director. The petitioner's probation period for appointment was to complete on 01-04-2010 but before that the Respondent-Deputy Commissioner appointed the private respondent No.3 as LDC-cum-Computer Operator on adhoc basis with effect from 11-05-2009 in place of the petitioner. The said appointment order was issued vide No.Estt-2019/06 dated 14-05-2009 (Annexure-13 to the writ petition), which is under challenge in this writ proceeding.

4. Mr. Son, learned counsel appearing for the petitioner submits that respondent authorities terminated the petitioner's service much before completion of the probation period without issuing any formal order to the petitioner. No notice was issued to him for termination of his appointment. Moreover, the private respondent No.3 was not selected by any legally constituted committee or board for appointment to the aforesaid post. The Deputy Commissioner is not a competent authority, in other words, he is not the appointing authority to appoint a person/candidate as LDC-cum-Computer Operator. The Competent authority is Director (IT, Science and Technology), Govt. of Arunachal Pradesh. The principle of natural justice has been violated while terminating the petitioner's service and as such, the impugned order appointing the private respondent No.3 is liable to be quashed or cancelled restoring the petitioner to his service.

5. Mr. Tony Pertin, learned counsel appearing for the private respondent No.3 fairly and honestly submits that the appointment of Respondent No.3 in place of the petitioner is irregular and illegal and her appointment cannot be sustained under the law.

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He however submits that the petitioner has accrued no right to continue in the post of LDC-cum-Computer Operator on the basis of appointment on probation inasmuch as he could not satisfy the appointing authority by showing himself as fit in the said post. Complaint against the petitioner and the inquiry made by the authorities concerned, speaks about his unsatisfactory service during probation and therefore, no illegality was committed by the respondent authorities in terminating the service of the petitioner during probation period. Both petitioner and private respondent No.3, according to Mr. Pertin, learned counsel, have no legal right to claim appointment to the said post and the department is duty bound to conduct a fresh recruitment process to fill up the said post.

6. Ms. Mize, learned State Counsel submits that the petitioner, without proper leave, went for higher studies in New Delhi for 2 years and he obtained master degree in planning from the School of Planning and Architecture, New Delhi. The Circle Officer-cum-BDO is not the competent authority to grant study leave or issue the no objection certificate in favour of the petitioner. The SDO, Changtajo brought this fact of unauthorized absence to the notice of the higher authorities. The petitioner in order to cover his misconduct submitted joining report on 01-07-2009 on back date i.e. 01-05-2009 after the private respondent No.3 was appointed in his place. While the private respondent No.3 has been attending her duties, the Respondent-Deputy Commissioner informed the Commissioner (IT, Science and Technology), Govt. of Arunachal Pradesh vide his letter dated 20-01-2010 about the entire fact regarding petitioner's unauthorized absence from duties. Having come to know about the same, the petitioner has approached this Court without clean hand. Her submission is based on averments made in paragraph 2(d) & 2(f) of the counter affidavit filed on behalf of the Respondent No.2.

7. On examination of pleadings of the parties, it is found undisputed that the petitioner, during probation period, went out for pursuing master degree course for a period of 2 years at New Delhi. He had been there for 2 years and obtained the master degree in planning with specialization in urban planning. It is not for

consideration of this court as to who is the competent authority for allowing the petitioner to go for higher studies for such long period. The relevant question is whether a probationer can go for higher studies for such long period. In my considered view, a probationer cannot go for higher studies and no authority should grant NOC or study leave because the appointing authority is to observe the conduct, efficiency and improvement of the probationer in his performance during probation period. In other words, permission or leave for higher studies could be granted to an employee only after he/she is absorbed on regular basis. In this case, the petitioner, before his absorption on regular basis, admittedly went for higher studies. The authority of granting leave or permission by the Circle Officer-cum-BDO concerned has also been questioned. In my considered view, the authority of the Circle Officer-cum-BDO is disputable inasmuch as he is not the appointing authority of the employee/probationer concerned to give such permission or leave. It is easily understood that when a probationer remains absent or involves himself in other activities, he would not be able to improve his performance or efficiency. The termination of service of such a probationer can be ordered without serving any notice or providing opportunity of being heard. In such case, the principle of natural justice would not come to play its role. The termination order in respect of the petitioner seems to be punitive in nature but when it is closely examined in the aforesaid facts and circumstances, it is nothing but a termination simpliciter. The established law is that the order of termination of service of a probationer due to unsatisfactory service is not violative of Article 31 of the Constitution of India. The illustrative judgment in **State of U.P. Vs. Ram Krishna**, reported in **AIR 1999 SC 3675** would be enough to bring home this point.

8. I have seriously considered the submissions made by the learned counsel for the private respondent No.3, which I find most sound and acceptable. Accordingly, I hold that the impugned action in terminating the service of the petitioner on probation cannot be faulted due to his admitted prosecution of higher studies for the entire period of probation of 2 years neglecting his commitment to show his improvement in service and good conduct during probation period. He has disintitiled himself to continue in service. His service,

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therefore, cannot be restored. This writ petition accordingly fails and stands dismissed without imposing any cost.

9. It may be made clear that the respondent No.3 shall not be allowed to continue in service by virtue of irregular and illegal appointment made by the Respondent-Deputy Commissioner, East Kameng District, Seppa vide impugned order dated 14-05-2009 and she shall be relieved from service forthwith within a period of 7 days from today. The respondent authorities concerned shall decide the entitlement of salary to the petitioner and respondent No.3 as per their entitlement and actual service rendered by them and make payment there<sup>of</sup> accordingly. The respondent authorities shall proceed for regular recruitment process immediately for filling up the said post in accordance with existing rules and procedure.

  
JUDGE

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