

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

ITANAGAR PERMANENT BENCH

WRIT APPEAL 12(AP)2015

1. The State of Arunachal Pradesh represented by the Secretary, Department of Power, Government of Arunachal Pradesh, Itanagar.
2. The Chief Engineer, Power Department, Government of Arunachal Pradesh, Itanagar.
3. The Superintending Engineer(Coord.), Electrical Circle No. 1, Power Department, Government of Arunachal Pradesh, Naharlagun.

...Appellants/Respondents No. 1, 2 & 3.

By Advocate:

Mr. Subu Tapin, Senior Government Advocate

Versus-

1. Shri K. Bir Mongal Singh, son of Birchandra Singh, present resident of Power House Colony, Pasighat Town, P.O. & P.S. - Pasighat, East Siang District, Arunachal Pradesh.

.....Respondent/writ petitioner

2. Sri Santosh Kr. Rao, Junior Engineer(Electrical), C/o Office of the Executive Engineer(Electrical), Bomdila Division, PO & PS - Bomdila, West Kameng District, Arunachal Pradesh.

..Respondent/Respondent No. 4

Advocates for respondent No. 1:

Mr. Marto Kato

:::BEFORE:::

**HON'BLE MR. JUSTICE SUMAN SHYAM
HON'BLE MR. JUSTICE AJIT BORTHAKUR**

**Date of hearing : 07-12-2016
Date of Judgment & Order: 07-12-2016**

JUDGMENT & ORDER(ORAL)

(By Suman Shyam, J.)

Heard Mr. Subu Tapin, learned counsel for the appellants. Also heard Mr. Marto Kato, learned counsel, for respondent No. 1/writ petitioner.

2. This Writ Appeal is directed against the judgment & order dated 10.02.2014 passed by the learned single Judge in WP(c)69(AP)2002 whereby the writ petition filed by the respondent No. 1 was allowed with a direction upon the appellants to appoint/regularize the service of the petitioner as Junior Engineer(E) with immediate effect.

3. The brief factual background the case, is that, the respondent No. 1/ writ petitioner is a Diploma Holder in Electrical Engineering and in view of his technical qualification, he was appointed as a Draftsman, on casual basis, under the Superintending Engineer(E), Pasighat, in the State of Arunachal Pradesh on 01-08-1988. While the respondent No. 1 was serving as a Draftsman, the Superintending Engineer(E), A.P. Electrical Circle-1, had issued an Advertisement Notice dated 05.11.1990, inviting applications from duly qualified candidates for filling-up 66(approx.) posts of Junior Engineer (Electrical/Mechanical) in the Public Works Department, Arunachal Pradesh. Pursuant to the said Advertisement, the respondent No. 1 had also submitted his candidature, whereafter, the department had conducted a written test on 10-05-1991 and eventually, published 2(two) Select Lists, indicating the merit position of the selected candidates. The first Select List (hereinafter referred to as List 'A') contained the names of 49 candidates, all of whom were serving as adhoc Junior Engineers under various departments of the Government of Arunachal Pradesh. The second Select List(hereinafter referred to as List 'B') contained the names of 30 candidates who were not treated as departmental candidates. Although the Advertisement Notice dated 05.11.1990 had indicated that as many as 66 vacancies were to be filled-up through the selection process, yet the actual number of vacancies available in the department at the relevant point of time were only 49 but the figure projected in the said Advertisement Notice dated 05.11.1990 was on the basis of both existing vacancies as well as anticipated vacancies.

4. According to the appellants, the actual vacancies that arose for filling-up on the basis of the selection process conducted pursuant to Advertisement Notice dated 05.11.1990, were only 46 and by operating the List 'A', all 46 vacancies were filled-up and as such, none of the candidates whose names appeared at List 'B', could be appointed.

5. While the above mentioned process of selection was going on, the respondent No. 1/writ petitioner was appointed as a Junior Engineer(E) in the Office of the Superintending Engineer(E), on adhoc basis, by issuing the appointment order dated 24.09.1991 but his services were terminated w.e.f. 04.11.1991 vide order dated 22.11.1991 issued by the appellant No. 3. The said appointment of the respondent No. 1 was, however, in no way connected with the Advertisement Notice dated 05.11.1990 and the respondent No. 1 had also not challenge the order of termination dated 22-11-1991.

6. It appears from the record that one Manoj Kr. Tiwari, who was working as Draftsman(E), Gd-III, was appointed to officiate as Junior Engineer(E), on temporary basis, vide order dated 05.02.1990, issued by the appellant No. 3. Similarly, by issuing order dated 28.02.1990, one Karan Singh, who was working as Draftsman(E), Gd-III, was appointed as Junior Engineer(E). In similar fashion, vide order dated 02.02.1990 issued by the appellant No. 3, the respondent No. 4 was also appointed as Junior Engineer(Elect). Although the aforesaid persons were appointed against the existing vacancies, yet their services were subsequently terminated by the department concerned. Be it mentioned herein that, in List 'B', the name of respondent No. 1/writ petitioner appears at Sl. No. 20 whereas the names of Manoj Kr. Tiwari and Karan Singh and private respondent No. 4 appeared at Sl. No. 21, 24 and 25, respectively.

7. Aggrieved by the order of termination of his service as Junior Engineer, Manoj Kr. Tiwari had approached this Court by filing Civil Rule No. 2697/1993, seeking a *writ of mandamus*, for appointing/re-appointing him as Junior Engineer(E), which petition was dismissed by the learned single Judge, vide order dated 08.03.1996.

8. Similarly, Karan Singh had also approached this Court by filing Civil Rule No. 354/1992, challenging the order dated 28-01-1992 passed by the appellant No. 3, terminating his services as Junior Engineer by serving 30 days notice.

Since, there was a stay order passed by this court suspending the operation of the order dated 28-01-1992, hence, Karan Singh continued in service in the post of Junior Engineer. In the Writ Petition filed by Karan Singh, the learned single Judge had taken note of the fact that he was a departmental candidate who had put in long years of service in the department. Since, there were vacant posts of Junior Engineer available in the department, hence, the petitioner(Karan Singh) was held to be entitled to be regularized in the post he was holding. As such, by the order dated 20.09.1993, this Court had allowed the petition by setting aside the order of termination of service and directed the State to pass necessary orders for regularization of the service of the said petitioner.

9. Manoj Kr. Tiwari had preferred a Review Application being R.A. 50/1996 arising out of Civil Rule No. 2697/1993, seeking a review of the judgment & order dated 08.03.1996. The case of the review applicant was that while filing up the 66 vacancies, all those persons who were working as Junior Engineers on adhoc basis, were accommodated except the review applicant although he was also entitled to a similar treatment. Taking note of the said submission of the review applicant and also the stand of the Government taken in the affidavit, by order dated 09.03.2000, the learned single Judge had allowed the Review Application as well as Civil Rule No. 2697/1993, by directing that the writ petitioner Manoj Kr. Tiwari be also given the same benefits and his services be regularized as has been done in the case of other similarly situated persons.

10. Taking note of the judgment & order passed by this Court in Civil Rule No. 354/1992 as well as R.A. 50/1996, services of Karan Singh and Manoj Kr. Tiwari were regularized in the post of Junior Engineer(E). Since the private respondent No. 4 viz. Santosh Kr. Rao, was similarly situated as the petitioners in the aforementioned 2(two) cases and considering the fact that the Respondent No. 4 was senior to other 2(two) candidates as per their dates of appointment, the State appellants had also regularized the services of respondent No. 4 in the post of Junior Engineer(E) even though respondent No. 4 had not obtained any order in his favour from the Court.

11. After the respondent No. 4 was given appointment vide order dated 14.05.2001, the respondent No. 1/writ petitioner had instituted WP(c)69(AP) 2002, inter alia, challenging the order dated 14.05.2001 as well as earlier order dated 22.11.1991 by means of which, his services in the post of Junior Engineer(E) were terminated. In addition to the above, the respondent No. 1/ writ petitioner had also prayed for a direction for appointing him as Junior Engineer on the basis of Select List prepared in terms of Advertisement Notice dated 05.11.1990.

12. Taking note of the fact that respondent No. 4 and 2(two) other persons, viz. Karan Singh and Manoj Kr. Tiwari, being adhoc appointees, were regularized in the post of Junior Engineer(E), the learned single Judge had directed the appellants to regularize the services of the private respondent No. 1/writ petitioner in the post of Junior Engineer(E), without, of course, giving him any back wages. Aggrieved by the aforesaid direction passed by the learned single Judge, the State is in appeal, before us.

13. It would be pertinent to mention herein that WP(c)69(AP)/2002 was earlier allowed by the learned single Judge of this Court, by issuing similar direction for regularization of the services of respondent No. 1 in the post of Junior Engineer(E) vide judgment & order dated 17.06.2005. The appellants had challenged the judgment & order dated 17.06.2005 in Writ Appeal No. 614/2005. By judgment & order dated 06.04.2006, the Division Bench of this Court had allowed the Writ Appeal filed by the State, thereby setting aside the judgment & order dated 17.06.2005 passed by the learned single Judge in WP(c)69(AP)2002.

14. Being aggrieved by the judgment & order dated 06.04.2006, the respondent No. 1 had preferred a Special Leave Petition being SLP(C) No. 13026/2006 before the Hon'ble Supreme Court. By order dated 29.04.2008, the Supreme Court had remanded the matter back to the Division Bench, with a request to decide the appeal on merit since in the earlier judgment, the Division Bench had set aside the order of the learned single Judge only on the ground of delay and laches, without entering into the merit of the appeal. In terms of order dated 29.04.2008, the matter came up for consideration before the Division Bench and by order dated 27.11.2012, the Division Bench of this

Court had again remanded the matter to be heard afresh by the single Judge, by observing that the learned single Judge did not consider the plea of the State that the Select Lists was not acted upon. Accordingly, the matter was re-heard by the learned single Judge of this Court and disposed of, vide impugned judgment & order dated 10.02.2014, which is under challenge in the present proceeding.

15. Mr. Tapin, learned Senior Government Advocate, Arunachal Pradesh, appearing for the appellants, submits that in the Advertisement Notice dated 05.11.1990, the candidates who were serving as adhoc Junior Engineer in various departments under the Government of Arunachal Pradesh, were asked to submit applications through proper channel, thereby, indicating that the Government was looking to give an opportunity to such adhoc appointees to regularize their appointments through a proper selection process. That is the reason why the Government had to come up with List 'A' and List 'B'. Learned Senior Government Advocate submits that the respondent No. 1/writ petitioner could not have been appointed on the basis of the said selection process because of his low merit position and therefore, he did not have any right that could be enforced in this writ proceeding.

16. Assailing the finding recorded by the learned single Judge that the respondent No. 1/writ petitioner was entitled to a similar treatment as in the case of private respondent No. 4, Mr. Tapin, learned Senior Government Advocate, submits that respondent No. 4 and other 2(two) candidates were regularized as Junior Engineers on the basis of the orders passed by the Court and also taking note of the fact that they were already serving as Junior Engineers whose cases for regularization could not be considered by the department despite availability of vacancies. But at the relevant point of time the respondent No. 1 was not holding the post of Junior Engineer.

17. Mr. Tapin, learned Senior Government Advocate, submits that the appointment of respondent No. 4 and other 2(two) persons, has nothing to do with the Select List published in terms of Advertisement Notice dated 05.11.1990 and as would be evident from the orders passed by this Court, they were not similarly situated as the respondent No. 1/writ petitioner, herein. In such view of the matter, according to the learned Senior Government

Advocate, the learned single Judge was not justified in issuing a *writ of mandamus* directing regularization of the services of respondent No. 1/writ petitioner as Junior Engineer(E).

18. Referring to Paragraph No. 23 of the affidavit-in-opposition, Mr. Tapin, further submits that the respondent No. 1/writ petitioner is guilty of laches and negligence inasmuch as although the Select List was published way back in the year 1990-91 and the appointments made immediately thereafter, the respondent No. 1/writ petitioner has remained silent for 11(eleven) long years before approaching this Court by filing this writ petition. In such view of the matter, no relief can be granted to the respondent No. 1/writ petitioner since he has been a fence-sitter without having any genuine intention of securing any relief from the Court in the matter. In support of the aforementioned arguments, Mr. Tapin, learned Senior Government Advocate, has relied upon a decision of the Hon'ble Apex Court in the case of ***State of U.P. & ors. Vs. Arvind Kr. Srivastava***, reported in ***(2015) 1 SCC 347***.

19. Resisting the arguments made by Mr. Tapin; Mr. Kato, learned counsel for respondent No. 1/writ petitioner, submits that since his client was also serving as a Draftsman in the department concerned at the relevant point of time, he ought to have been treated as a departmental candidate and ought to have been meted-out a similar treatment as in the case of private respondent No. 4. As such, there is no illegality or infirmity in the judgment and decision rendered by the learned single Judge.

20. Coming to the question of delay, Mr. Kato, learned counsel, submits that the respondent No. 1/writ petitioner has been making repeated representations before the authorities ventilating his grievance and it was only when such representations failed to evoke any response that the petitioner was compelled to approach this Court, by filing WP(c)69(AP)2002. In such view of the matter, according to Mr. Kato, the delay in this case, is well-explained and therefore, the present is not a case of laches and negligence on the part of the writ petitioner.

21. We have considered the submissions of the learned counsel for the parties and have also perused the materials available on record.

22. After hearing the learned counsel for the parties at length, we find that the case of the appellant broadly hinges on two issues, firstly, whether the respondent No. 1/writ petitioner has any enforceable right arising out of the Select List prepared in terms of Advertisement Notice dated 05.11.1990 and secondly, whether, by applying the principles of parity, the petitioner was also entitled to a similar treatment as in the case of respondent No. 4.

23. Referring to the first question, as formulated above, we find that the department concerned had prepared 2(two) separate lists of selected candidates, indicating their merit position. As per List 'A', 49 candidates who were already serving the department on adhoc basis, were selected. The candidate holding the first position in List 'A' has been shown to have secured 82.38% marks whereas the last candidate whose name appears at Sl. No. 49 has secured 44.10% marks. Similarly, the candidate at Sl. No. 1 in List 'B' has been shown to have secured 69.58% marks whereas the candidate at Sl. No. 38, has secured 46.70% marks. The name of the petitioner figures at Sl. No. 20 at List 'B' whereas the respondent No. 4 is at Sl. No. 25 of the same list.

24. Since the Advertisement Notice dated 05.11.1990 did not mention about preparation of 2(two) different select lists, hence, we fail to understand the logic behind preparing two parallel select lists on the basis of one selection process, merely, on the ground that some candidates were working as adhoc appointees in the department. This is more so when the select list did not indicate any preferential treatment to be given to the internal candidates of the department since the process was one for direct recruitment.

25. Be that as it may, in order to ascertain as to whether the petitioner has any enforceable right to be appointed in terms of the select list, we have made an attempt to assimilate both the select lists so as to figure out the merit position of the petitioner in terms of the marks obtained by all the candidates. On the basis of the said exercise, we find that the writ petitioner's position in the consolidated select list, would be at Sl. No. 61, with as many as 60 candidates placed above him in the order of merit. That apart, there are as many as 4(four) APST candidates who would be entitled to the benefit of the reservation policy.

26. Mr. Tapin, learned Senior Government Advocate, has consistently submitted that only 46 vacancies were filled-up by operating the aforesaid select lists since new vacancies as anticipated by the department did not arise for being filled-up from the said select lists and the said submission of the learned government counsel is also borne out from the record. Although Mr. Kato, has denied the aforesaid assertion made by the learned Senior Government Advocate, yet, he could not invite the attention of this court to any relevant material to substantiate his claim. Therefore, we are of the view that only 46 vacancies had been filled by operating the select list. It is also not the case of the respondent No. 1 that any person placed below him in the select list had been appointed by operating the list. If that be so, the respondent No. 1/writ petitioner did not have any right to be appointed as Junior Engineer (E) in terms of the select lists prepared under the Advertisement Notice dated 05.11.1990.

27. Coming to the next question of parity of the respondent No. 1/writ petitioner with the respondent No. 4, as has been mentioned hereinabove, 2(two) of the adhoc appointees in the post of Junior Engineer(E) being aggrieved by their discontinuation from service, had earlier approached this Court by filing separate writ petitions asserting their rights to be appointed/regularized as Junior Engineer(E). Taking note of the fact that the said candidates were already serving as Junior Engineer(E) in the department, this Court had recognized the rights of such candidates to continue in service and therefore, issued direction to the respondent authorities, to regularize their services. While complying with such direction, the department could realized that respondent No. 4 viz. Sri Santosh Kr. Rao was similarly situated as that of Sri Karan Singh and Sri Manoj Kr. Tiwari and therefore, the department extended the benefit of the orders passed by this Court, in the cases of Sri Karan Singh as well as Sri Manoj Kr. Tiwari, to the respondent No. 4 even though he did not file any writ petition before the Court.

28. As has been mentioned above, the learned Single Judge of this court had taken note of the fact that Manoj Kumar Tiwari and Karan Singh had been working as Junior Engineers in the department on adhoc basis when their services were terminated despite existence of vacancies to absorb them. But that was not the case with the respondent No. 1. After termination of his

service in the post of Junior Engineer, the respondent No. 1 was absorbed as W/C Draftsman in which post he continued. Moreover, the respondent No. 1 also did not challenge his order of termination from the post of Junior Engineer. There is nothing on record to indicate as to on the date of termination of the service of the respondent No. 1 from the post of Junior Engineer i.e. 22-11-1991 what was the vacancy position in the posts of Junior Engineer. Therefore, after examining the orders passed by the learned single Judge in the cases of Karan Singh and Manoj Kr. Tiwari, we are unable to agree with the submissions of Mr. Kato, learned counsel, that respondent No. 1/writ petitioner was also similarly situated as the respondent No. 4.

29. Now coming to the question of laches on the part of the respondent No. 1 in approaching this court after the delay of 11 years, the law in the aforesaid subject has been laid down by the Hon'ble Apex Court in the case of ***State of U.P. & Ors. v. Arvind Kr. Srivastava***(supra). The observations made by the Apex Court in **Paragraph No. 22** is reproduced hereinbelow for ready reference:

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up, as under:

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so, would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim."

30. On examining the observations made by the Hon'ble Apex Court in the aforesaid decision, we are of the view that the ratio laid down in the case of ***State of U.P. & Ors. v. Arvind Kr. Srivastava*** (supra), is squarely applicable in the facts of the present case. Since, the respondent No. 1 never challenged the termination order dated 22.11.1991 but has remained silent over his rights for 11 (eleven) long years, he cannot now be permitted to agitate his grievance in this writ petition invoking the equitable jurisdiction of this court at this distant point of time seeking regularization of his services in the post of Junior Engineer in the department.

31. For the reasons stated here-in-above, we are of the view that the impugned judgment & order dated 10.02.2014 passed by the learned single Judge in WP(c)69(AP)2002, is not sustainable in the eye of law and the same is hereby set aside. The Writ Appeal stands allowed. However, having regards to the facts and circumstances of the case, there would be no order as to costs.

JUDGE

JUDGE

Bhask