

IN THE GAUHATI HIGH COURT

(THE HIGH COURT: ASSAM: NAGALAND: MIZORAM AND ARUNACHAL PRADESH)

:: ITANAGAR PERMANENT BENCH ::

WA7 (AP) 2018

ShriTashiDhondup&Others Appellants

-Versus-

Mrs. Bandana Nasi&Others Respondents

-WITH-

WA12 (AP) 2018

ShriTadakGakap& Others Appellants

-Versus-

The State of Arunachal Pradesh & others Respondents

-BEFORE-

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Advocate for the appellants : Mr. N Ratan
Mr. TT Tara
Advocates

Advocate for the Respondents: Mr. R Saikia
Advocate
Mr. D Soki
Addl. Sr. Govt. Advocate
Mr. T Bayor
SC, RD
Ms. S Wanglat
Advocate

Date of hearing& Judgment : **12.09.2019**

::JUDGMENT & ORDER::

(PK Deka, J)

Heard Mr. N Ratan, learned counsel for the appellants; Mr. R Saikia, learned counsel for the respondent nos. 1 to 7; Mr. D Soki, learned Additional Senior Government Advocate appearing for the respondent nos. 8 & 9; Mr. T Bayor, learned counsel for the respondent no. 10 and Ms. Wanglat, learned counsel for the respondent nos. 11 to 17 in WA 7 (AP) 2018. Also heard Mr. TT Tara, learned counsel for the appellants; Mr. R Saikia, learned counsel for the respondent nos. 4 to 10; Mr. D Soki, learned Additional Senior Government Advocate appearing for the respondent nos. 1 & 2 and Mr. T Bayor, learned counsel for the respondent no. 3 in WA 12 (AP) 2018.

2. Both the writ appeals are taken up for disposal by this common judgment and order. The brief facts of both the appeals are stated as follows:

WA 7 (AP) 2018

3. The present appeal is preferred by the appellants against the judgment and order dated 28.11.2017 passed in WP(C) 642 (AP)/2016. The appellants were appointed as Progress Assistants on contract basis under the Rural Development Department, Government of Arunachal Pradesh in the year 2009. The respondent nos. 1 to 7 (writ petitioners) were also appointed

as Progress Assistants/ Extension Officer (credit) (for short, PA/EO) on contract basis after the appellants were appointed and as such, the appellants were shown senior to the writ petitioners in the seniority list. In the year 2015 there arose 12 (twelve) vacancies of PA/EO (credit) due to retirement/ promotion etc. of the incumbents. The appellants, five in numbers, were given officiating appointments in the said vacancies vide order dated 29.07.2015 on the ground that they had put in substantive years of service on contract basis and also upon the consideration of their seniority. The respondent nos. 11 to 17 (who were respondents in WP(C) 642 (AP)/2016) were directly appointed in the remaining 7 (seven) vacancies. Being aggrieved, the respondent nos. 1 to 7 (writ petitioners) challenged the appointments of the respondent nos. 11 to 17 by the WP(C) 642 (AP)/2016 on the ground that the said respondent nos. 11 to 17 were junior to the respondent nos. 1 to 7. The present appellants were not made as party respondents in the said writ petition. The learned Single Judge disposed of the said writ petition vide judgment and order dated 28.11.2017 whereby the appointment orders of the appellants as well as the private respondents (respondent nos. 11 to 17) though not quashed and set aside but it was made clear that all the twelve posts should be advertised and recruitment on regular basis should be held as per recruitment rules of the service within a period of 3 (three) months from the date of receipt of the said order. The learned Single Judge further directed that in case the recruitment process is not completed within a period of 3 (three) months,

the service of the appellants as well as the private respondents in WP(C) 642 (AP)/2016 who were appointed on officiating basis shall automatically come to an end on the expiry of the three months' period. Accordingly, this appeal is filed for setting aside the impugned judgment and order dated 28.11.2017 passed in WP(C) 642 (AP)/2016.

WA 12 (AP) 2018

4. The writ petitioners in WP(C) 642 (AP)/2016 were appointed as PA/EO (credit) on contractual basis with a fixed pay scale of Rs. 7,300/-. On the basis of the date of joining the respondent authorities prepared a seniority list vide order dated 22.04.2014 of the contractual PA/EO (credit). In the said seniority list the writ petitioners were placed at Sl. Nos. 6 to 12. Due to promotion/retirement/ death etc. 12 numbers of post of PA/EO (credit) fell vacant. Accordingly, on the basis of the seniority list Sl. Nos. 1 to 5 (appellants in WA 7 (AP)/2018) were appointed on officiating basis. However, the contention of the writ petitioners is that the present appellants (private respondent nos. 4 to 10 in WP(C) 642 (AP)/2016) were appointed on officiating basis by superseding the writ petitioners. The private respondent nos. 4 to 10 (writ petitioners in WP(C) 642 (AP)/2016) as contended by the present appellants filed WP(C) 581 (AP)/2016 for a direction to dispose of the representation of the petitioners pending before the respondent authorities and accordingly the same was disposed of by a direction to the respondent authorities to dispose of the representations of the petitioners in the writ petition. The respondent authorities vide order dated 28.11.2016 disposed of the representation holding that they

have no right to claim regularization as they were holding contractual posts on the basis of a deed of agreement with an observation that whenever there lies any vacancy, the writ petitioners would be accommodated. Being dissatisfied with the order passed on the basis of the representation, the writ petitioners filed the subsequent WP(C) 642 (AP)/2016. The learned Single Judge vide the impugned order dated 28.11.2017 disposed of the writ petition directing the respondent authorities to initiate fresh recruitment process of twelve numbers of post within 3 (three) months but without quashing and setting aside the impugned appointment orders of the appellants. The respondent authorities are trying to initiate a fresh recruitment of the posts being held by the appellants though the said posts held by them does not fall within the twelve vacant posts. Hence, the appeal is filed on the ground that

- (a) the posts are still to be sanctioned by the Government;
- (b) the writ petitioners have no locus to file writ petition;
- (c) the private respondents/ appellants were appointed purely on contractual basis due to administrative exigency;
- (d) the petitioners never made any specific representation before the respondent authorities to consider them in the purported vacant posts instead of considering the present appellants (the private respondents in WP(C) 642 (AP)/2016) in the said posts;
- (e) though there is no formal approval of the Government of Arunachal Pradesh to fill up the vacancies, the learned Single Judge directed the respondent authorities to initiate a fresh recruitment of 12 numbers of post which stood vacant due to retirement/ promotion etc. of

some of the employees within 3 months thereby exceeding the jurisdiction and committed serious error of law; and

(f) the grievances of the writ petitioners were redressed by the respondent authorities by appointing them in the post as officiating employees.

Accordingly, the appeal is preferred for setting aside the judgment and order 28.11.2017 passed in WP(C) 642 (AP)/2016.

5. Mr. Ratan submits that the appellants in WA 7 (AP)/2018 are prejudiced by the impugned order inasmuch as they were not made parties in the writ petition. Moreover, there is a specific pleading in the writ petition that the petitioners are not aggrieved due to the appointment of the appellants as officiating employees in the pay scale. But even then, the learned Single Judge failed to take note of the said pleading and passed the impugned judgment and order without considering the consequence thereof. Accordingly, he sought for setting aside the impugned judgment and order and remand the same for a fresh decision in the writ petition after hearing the appellants.

6. Mr. Tara, learned counsel for the appellants in WA 12 (AP)/2018, submits that the writ petitioners were allowed to officiate subsequent to passing of the impugned judgment and order and as such, the grievances which they raised in the writ petition were redressed and keeping in view the subsequent development, necessary interference is sought for by modifying the impugned judgment and order passed by the learned Single Judge.

7. Mr. Soki, on the other hand, submits that no interference is required inasmuch as the learned Single Judge once satisfied with the grounds raised in

the writ petition passed the order directing the respondent authorities to regularize the appointments of the parties to this appeal as per recruitment rules and that cannot be termed to be an illegality moreso, when the defence were well pleaded by the appellants in WA 12 (AP)/2018 before the learned Single Judge and that itself is sufficient for espousing the cause of the appellants in WA 7 (AP)/2018. Mr. Bayor, learned Standing Counsel for the Rural Development department, on the other hand, submits that as the writ petitioners were appointed to the same post under the department in the Scale of Pay of Level 6 plus other allowances and concession as admissible under the Rules and orders in force on officiating basis as such, the status of the writ petitioners and the appellants are same. Such being the position, there remains no grievance on the part of the writ petitioners.

8. We have given due consideration to the submissions of the learned counsel appearing for the parties. On perusal of the writ petition the cause of action for filing the same was due to the appointment orders dated 29.07.2015 and 31.07.2015 in respect of the appellants (private respondent nos. 4 to 10 in WP(C) 642 (AP)/2016) were illegal as the said 7 (seven) posts were filled up through direct recruitment without advertisement and recruitment/ proper selection process on officiating basis with all pay scale benefits and on the other hand, the petitioners are serving in the department on contractual basis at fixed salary of Rs. 7,300/- per month which is violative of Articles 14 and 16 of the Constitution of India. It is specifically pleaded that out of 12 vacant posts the appellants in WA 7 (AP)/2018 were appointed. There is specific averment that the writ petitioners do not have any grievance against the appellants in WA 7

(AP)/2018, they being senior to the writ petitioners. But the learned Single Judge held as follows:-

"12. In view of this submissions of the respondents, the appointment orders of the respondents including that of the seniors of the petitioners are not being quashed and set aside, but it is made clear that all the 12 posts should be advertise and recruitment on regular basis should be held as per the recruitment rules of the service within a period of 3 months from the date of received of a copy of this order. In case, the recruitment process is not completed within a period of 3 months, the service of the persons who were appointed on officiating basis shall automatically come to an end on the expiry of the 3 months period"

9. But while passing the said operative portion, the learned Single Judge failed to consider that the said 12 posts includes the appellants in WA 7 (AP)/2018 and they were not impleaded in the writ petition. In *V. K. Majotra vs. Union of India & others* reported in (2003) 8 SCC 40, the Hon'ble Apex Court held that the writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to the notice on the additional points to satisfy the principles of natural justice and the parties cannot be taken up by surprise. Here also a similar situation has arisen. The appellants in WA 7 (AP)/2018 were not made parties in the WP(C) 642 (AP)/2016 and there is specific pleading that the said appellants are holding five numbers of posts as officiating employees and under such circumstances, the direction that if the recruitment process is not completed within a period of 3 months, the service of the persons who were appointed on officiating basis shall automatically come to an end and in our considered opinion affects the writ appellants in WA 7

(AP)/2018. It is quite natural that the said appellants are aggrieved inasmuch as they were not heard at the time of passing the impugned judgment and order which affected them moreso when there was no grievance against them raised by the writ petitioners. Under such circumstances, we are constrained to hold that the appellants in WA 7 (AP)/2018 were affected and hit by violation of principles of natural justice and as such, we interfere in the impugned judgment and order by setting aside the same and remand the same to be decided by the learned Single Judge afresh which we accordingly do but after hearing the appellants in WA 7 (AP)/2018. In view of the said observation, we refrained ourselves from entering into the merit of the WA 12 (AP)/2018. The learned Single Judge will consider the submissions of the appellants in WA 7 (AP)/2018 after impleading them as respondent nos. 11 to 15 in WP(C) 642 (AP)/ 2016 and after hearing all the parties in the writ petition pass a judgment and order afresh. Accordingly, both the writ appeals stand disposed of.

Interim order passed earlier stands vacated.


JUDGE


JUDGE

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