

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

1. WP(C)103(AP) of 2016

Shri Kesang Dondup, presently serving as Assistant Project Officer (Technical), Department of Rural Development and presently posted to DRDA, Yingkiong, District- Yingkiong, Arunachal Pradesh.

..... *Petitioner.*

– VERSUS –

1. The State of Arunachal Pradesh, represented by the Chief Secretary, Government of Arunachal Pradesh, Papumpare District, Itanagar.
2. The Chief Secretary, Government of Arunachal Pradesh, Papumpare District, Itanagar.
3. The Commissioner (Rural Development), Government of Arunachal Pradesh, Papumpare District, Itanagar.
4. The Director (Rural Development), Government of Arunachal Pradesh, Papumpare District, Itanagar.

.....*Respondents.*

2. WP(C)104(AP) of 2016

Shri Vishwa Kumar Tyagi, presently erving as Assistant Project Officer (Technical), Department of Rural Development and presently posted to DRDA, Namsai, Namsai District, Arunachal Pradesh.

..... *Petitioner.*

– VERSUS –

1. The State of Arunachal Pradesh, represented by the Chief Secretary, Government of Arunachal Pradesh, Papumpare District, Itanagar.
2. The Chief Secretary, Government of Arunachal Pradesh, Papumpare District, Itanagar.
3. The Commissioner (Rural Development), Government of Arunachal Pradesh, Papumpare District, Itanagar.
4. The Director (Rural Development), Government of Arunachal Pradesh, Papumpare District, Itanagar.

.....Respondents.

Advocate for the Petitioners: Mr. D. Panging

Advocate for the Respondents: Mr. S. Tapin, Senior Govt. Advocate

Mr. T. Bayor, Standing counsel (RD)

::: BEFORE :::

HON'BLE MR. JUSTICE NANI TAGIA

Date of hearing & Judgment: 04.09.2019

JUDGMENT AND ORDER (Oral)

Heard Mr. D. Panging, learned counsel for the petitioners. Although Mr. P. K. Gour, learned counsel has prayed for an adjournment of the cases, on the ground that Mr. T. Bayor, learned Standing counsel for the Rural Development Department is out of station, yet, having considered the nature of the issues that have been raised in the present writ petitions and also in view of the fact that these writ petitions have been pending since the year 2016 with an interim order operating in favour of the petitioners, I deem it appropriate to dispose of these writ petitions on the basis of the materials available on record.

2. These writ petitions have been filed challenging the impugned order dated 19.02.2016 issued by the Commissioner (RD & PR), Govt. of Arunachal Pradesh vide No.CD-202/2015(E), by which order, the appointment of the writ petitioners as Assistant Project Officers (RE) in the establishment of District Rural Development Agency (in short 'DRDA'), Yingkiong and Namsai, respectively have been cancelled and are further repatriated to their post(s) of Extension Officers(RE) in the department of Rural Development, with immediate effect. The aforesaid impugned order dated 19.02.2016 has been stated to be issued on the basis of Office Memorandum being O.M. No. GOV-AP/2015 dated 10.02.2016 issued by the Governor of Arunachal Pradesh, whereby all officiating/functional appointment and promotion made without having due regard to the seniority position of the officials were directed to be reverted back.

3. The writ petitioners contends that the Office Memorandum dated 10.02.2016, on the basis of which, the petitioners have been repatriated to the parent department would not be applicable in their cases inasmuch as the petitioners have been appointed on the basis of office memorandum dated 20.05.2003 issued by the Secretary(RD & PR), Govt. of Arunachal Pradesh, Itanagar, which relates to the personnel policy for recruitment and engagement of staffs for administration of DRDA, wherein all category of staffs in the establishment of DRDA are provided to be recruited on deputation basis. As far as the Assistant Project Officer (RE) is concerned, under the notification, the same is required to be made by the deputationist from the cadre of Extension Officer (RE) of the Rural Development Department. The petitioners being Extension Officer (RE) in the Rural Development Department, they have been appointed on deputation basis as Assistant Project Officers (RE) as per the office memorandum dated 20.05.2003 referred to herein above and accordingly, the petitioners could not have been repatriated back by the impugned order dated 19.02.2016, on the basis of the office memorandum dated 10.02.2016 issued by the Governor of Arunachal Pradesh.

4. The respondents have contested the cases by filing a counter affidavit. In the counter affidavits filed by the respondents No.1, 2 and 3, as well as respondent No.4, apart from stating that the petitioners have been repatriated

on the basis of the office memorandum issued by the Governor of Arunachal Pradesh, nothing particular have been stated in the affidavit with regard to the applicability of the office memorandum dated 10.02.2016 issued by the Governor of Arunachal Pradesh in so far as the deputationist are concerned.

5. On perusal of the office memorandum dated 10.02.2016 issued by the Governor of Arunachal Pradesh, it is noticed that the object of the office memorandum was to prevent the 'out of turn' promotion of officials on officiating/functional basis in disregard of the seniority position of the officials. As such, in order to prevent out of turn promotion on officiating/functional basis in utter disregard of the seniority position of the officials, which was in rampant practice, the office memorandum dated 10.02.2016 came to be issued in order to rectify and correct such out of turn officiating/functional promotion made in the departments. However, the office memorandum dated 10.02.2016 has not indicated in any manner as to how the officials sent/appointed on deputation basis is to be dealt with.

6. In that view of the matter, the impugned order dated 19.02.2016, by which order the petitioners have been repatriated to the post of Extension Officer(RE), who were, otherwise, working as Assistant Project Officers(RE) on deputation basis could not have been issued on the basis of office memorandum dated 10.02.2016. Accordingly, the impugned order dated 19.02.2016 issued by the Commissioner (RD & PR), Govt. of Arunachal Pradesh vide No.CD-202/2015(E), in so far as the petitioners are concerned is hereby set aside and quashed, leaving it open to the respondent authorities to deal with the petitioners in the manner provided under the Rules in so far as deputationists are concerned.

The writ petitions are allowed and the same is **disposed of**.

JUDGE

Pura