

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

WP(C) 261 (AP)/2017

Smt. Habung Ampri, W/o Shri Habung Ruja,
Resident of G-Sector, Itanagar,
P.O. & P.S: Itanagar,
District Papum Pare, Arunachal Pradesh.

..... Petitioner

-Vs-

The State of Arunachal Pradesh and 6 Ors.

..... Respondent

By Advocates:

Mr. D. Laji,
M. Taler

..... For the petitioner

Ms. T. Wangmo, learned Junior Government

.....For the State respondent No. 1 to 4

Mr. M. Boje

.....for respondent No. 6

Mr. M. Bagra

.....for respondent No. 5 & 7

Date of hearing : **18.01.2019**
Date of judgment : **18.01.2019**

BEFORE
HON'BLE MR. JUSTICE NANI TAGIA
JUDGMENT & ORDER

Heard Mr. D. Laji, learned counsel for the petitioner and Ms. T. Wangmo, learned Junior Government Advocate appearing for respondent Nos. 1 to 4. Also heard Mr. M. Boje, learned counsel representing respondent No. 6. However, none appears for the respondent Nos. 5 & 7.

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the impugned order dated 22.01.2016, issued by the Chief Engineer, PHE & WS Department, vide No. PHED-I/25/96(Vol-I)/I, whereby the respondent No. 5/Smt. Pakyum Yaluk, Contingent Peon under PHE Department, has been appointed in the post of peon, on the recommendation of Departmental Promotional Committee (in short DPC), and order dated 03.08.2016, issued by the Superintending Engineer, PHE & WS Department, vide No. PHED/II/SE/Coord/156/2016/D/819-23, whereby Smt. Rikpe Lombi/ respondent No. 6, who was working as a casual typist, has been appointed as peon, on ad-hoc basis. The petitioner also challenges the order dated 15.09.2016, issued by the Superintending Engineer, PHE & WS Department, vide No. PHED/II/SE/Coord/156/2016/(A)/2078-83, whereby Ms. Marjum Bagra, a casual typist under the PHE & WS Department, has been appointed as peon, on ad-hoc basis.

3. The case of the petitioner is that she was appointed as casual peon by an order dated 01.11.1993, in the Department of PHE & WS, whereas the respondent No. 5 was appointed as casual peon on 12.12.2000 and respondent Nos. 6 & 7 were appointed as LDC (contingency), sometime in the year 2006. According to the petitioner, there is a seniority list of the casual worker under PHE Division, Itanagar, published and maintained as on December 2009, wherein the name of the petitioner appears at serial No. 96 and that of the respondent No. 5 appears at serial No. 104. The respondent No. 6 & 7 not being working under the Itanagar Division, their name do not find place in the seniority list

maintained by the PHE Division, Itanagar. Therefore, the learned counsel for the petitioner contends that the respondent No. 5 and respondent Nos. 6 & 7 having been appointed in the year 2000 and 2006 respectively, are much junior to the writ petitioner and despite that the respondent authorities vide impugned orders mentioned above have given them promotions and appointed as peon on regular and on ad-hoc basis, by excluding the writ petitioner who is much senior to the respondent Nos. 5, 6 & 7, having working in the department for more than 23 (twenty three) years.

4. Mr. D. Laji, learned counsel representing the writ petitioner, by referring to the Recruitment Rules namely the Peon/ Chowkidhar/ Dak Runner/ Mali/ Sweeper/ Follower/Kennel/Water Carrier, Group D, Recruitment Rules, 2008 as amended, vide amendment and notification dated 04.06.2010 and 27.01.2011, submits that the post specified in the Recruitment Rules, as above, have been converted from Group 'D' to Group 'C' vide amendment made in the year 2010; and by the 2011 amendment, the 25% of posts have been mandated to be appointed from the serving contingent staffs who have put in a minimum of 20 years and more continuous service. The petitioner have put in more than 23 years of service as contingent staff in the Department and therefore, the petitioner has the right to be considered for promotion in the post of peon in accordance with the Rules. However, the respondent authorities without considering the case of the writ petitioner have given effect the impugned order dated 22.01.2016, 03.08.2016 and 15.09.2016, and has illegally promoted the respondent No. 5 as a peon and also illegally appointed respondent Nos. 6 & 7 as a peon on ad-hoc basis. None of the respondents had completed the requisite 20 years of service.

5. Ms. T. Wangmo, learned counsel representing State respondent Nos. 1 to 4, by referring to the affidavit-in-opposition filed by the State respondents have sought to justify the impugned promotion and appointment made to the respondent Nos. 5, 6 & 7, stating that while the writ petitioner was appointed as casual peon initially, the writ petitioner was under aged as she was only 15 years of age and that is the reason why the writ petitioner have not been promoted as

peon and it is further submitted that the promotion of the respondent Nos. 5, 6 & 7, have been made on the basis of their performance and merits.

6. Mr. M. Boje, learned counsel representing respondent No. 6 submits that as she had been working as contingent LDC in different establishment or department of the Government of Arunachal Pradesh including PHE and Finance Departments, she was appointed as peon on ad-hoc basis by the Department of PHE, duly on merits. However, Mr. Boje concedes that there was no any interview or DPC conducted for appointing her as peon on ad-hoc basis.

7. Rival submissions advanced at the bar have received due consideration of this Court. It has remained undisputed from the pleadings and submissions made by the respective counsels that the writ petitioner was appointed as casual peon in the year 1993, whereas the respondent No. 5 was appointed as contingent peon in the year 2000 and respondent Nos. 6 & 7 were appointed as contingent LDC, sometime in the year 2006. On perusal of the Recruitment Rules for the General Arunachal Pradesh Peon/ Chowkidhar/ Dak Runner/ Mali/ Sweeper/ Follower/Kennel/Water Carrier, Group 'D', Recruitment Rules, 2008, it is found that the 25% of the Group 'C' posts are required to be filled up from the serving contingent staff, who have put in a minimum of 20 years and more continuous service. The writ petitioner having been appointed as contingent or casual peon in the year 1993 has apparently have served for more than 20 years in the department as contingent staff which makes the writ petitioner entitled to be considered for regular promotion in the post of peon that had fallen vacant. However, the respondent authorities did not consider the case of the writ petitioner to promote her in the post of regular peon. Although, the DPC was constituted and conducted on 21.01.2016 for effecting promotion to various post of Group 'C'. The writ petitioners' case was not considered in the said DPC; rather, the case of the respondent No. 5 was approved to be promoted as regular peon. In pursuance of the aforesaid DPC held, the impugned order dated 22.01.2016 was issued, promoting the respondent No. 5 as peon, thereafter, vide order dated 03.08.2016 and 15.09.2016, the respondent Nos. 6 & 7 were

also appointed as peon on ad-hoc basis without any interview or DPC conducted by excluding the writ petitioner.

8. The action of the respondent authorities in promoting and appointing the respondent No. 5, 6 & 7 to the post of peon, this Court finds that the promotion/appointments have been made contrary to the prescription made in the related Recruitment Rules. Respondent No. 5 was in no way eligible under the Recruitment Rules to be considered and promoted as peon inasmuch as, the respondent No. 5 had not completed the required length of 20 years of service as contingent staffs in the Department. On the other hand, the writ petitioner had already completed 23 years of service when the DPC was constituted and held in the year 2016. The appointment of respondent Nos. 6 & 7 as peon on ad-hoc basis also cannot be justified inasmuch as, no any interview or selection process was held nor any DPC was conducted as provided under the related Recruitment Rules. Such action of the respondent authorities would be contrary to the requirement of Article 14 of the Constitution of India.

9. For the reason and discussion made herein above, this Court is of the considered opinion that the impugned order dated 22.01.2016, issued by the Chief Engineer, PHE & WS Department, vide No. PHED-I/25/96(Vol-I)/I, order dated 03.08.2016, issued by the Superintending Engineer, PHE & WS Department, vide No. PHED/II/SE/Coord/156/2016/D/819-23, and order dated 15.09.2016, issued by the Superintending Engineer, PHE & WS Department, vide No. PHED/II/SE/Coord/156/2016/(A)/2078-83, has to be set aside and quashed with further direction to the respondent authorities, more particularly, the respondent No. 3/the Chief Engineer, PHE & WS Department to constitute a DPC to consider the case of the writ petitioner for giving promotion to the post of peon. It is ordered accordingly.

10. The constitution of the DPC and consideration of the writ petitioner for promotion to be made in the post of peon by the DPC, shall be completed within a period of 1 (one) month from the date of receipt of the certified copy of this order.

11. Notwithstanding, the setting aside of the impugned promotion or appointment orders of the respondent Nos. 5, 6 & 7, the Department or the respondent authorities would be at liberty to consider the case of the respondent Nos. 5, 6 & 7 for promotion or appointment to the post of peon strictly in accordance with the Rules.

The writ petition is **disposed of**, in terms above.

JUDGE

J.Bam