

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

ITANAGAR PERMANENT BENCH(NAHARLAGUN)

1. WP(c)99(AP)2012

Smt. Nyilyaang Yaja
W/o Shri Tapa Garam
R/o Nacho, PO/PS – Nacho
Upper Subansiri District, Arunachal Pradesh.

..... *Petitioner*

vs-

1. The State of Arunachal Pradesh, represented by the Secretary, PHED, Government of Arunachal Pradesh, Itanagar.
2. The Chief Engineer, PHED, Eastern Zone, Government of Arunachal Pradesh, Itanagar.
3. The Superintending Engineer, PHE Circle, Bene, Aalo, West Siang District, Arunachal Pradesh.
4. The Executive Engineer, PHE Division, Daporijo, District Upper Subansiri, Arunachal Pradesh.
5. Shri Taru Laa, QX(T), Plumber, C/o – Executive Engineer, PHE Division, Daporijo, PO/PS – Daporijo, Upper Subansiri District, Arunachal Pradesh.
6. Miss Johny Batak, WC Computer Operator, C/o – Executive Engineer, PHE Division, Daporijo, PO/PS – Daporijo, Upper Subansiri District, Arunachal Pradesh.

By Advocates:

For the petitioners:

Mr. Dicky Panging
Mr. Kali Bogo
Mr. Ojing Pada
Mr. Duge Soki
Ms. S. Darang

For the respondents: Ms. Tsering Wangmo, Government Advocate

Mr. A. K. Singh
Mr. L. Laa
Mr. D. Pangkam
Mr. K. Mengu

Ms. S. Nag

:::BEFORE:::

HON'BLE MR. JUSTICE NANI TAGIA

Date of hearing : 11.06.2019

Date of Judgment : 11.06.2019

JUDGMENT & ORDER(ORAL)

Heard Mr. Dicky Panging, learned counsel appearing on behalf of the petitioner. Also heard Ms. Tsering Wangmu, learned Government Advocate, appearing on behalf of the respondents No. 1 to 4. However, none appears on behalf of respondents No. 5 & 6.

2. This writ petition has been filed challenging the legality and validity of the impugned orders of appointment of the private Respondents No. 5 & 6 as W/C employees, vide order, dated 30.08.2010, issued by the Superintending Engineer, PHE Circle, Bene(Aalo), vide Orders, No. PHECB/ ESTT-40/09-10/29-138, and No. PHECB/ESTT-40/09-10/168-179 by which orders, the respondents No. 5 and 6 have been appointed as W/C(T) Plumber, and W/C Computer Operator, respectively.

3. The projected by the petitioner in this writ petition is that the petitioner was appointed as casual Typist in the Department of PHE & WS, under the Daporijo Division, on 21.01.2003 whereas the private Respondents No. 5 and 6 were appointed on 20.03.2004, and 03.03.2004, as casual labour and casual computer operator, respectively.

4. In a seniority list of casual labour under the PHE & WS Division, Daporijo, as issued by the Executive Engineer, PHE & WS Division, Daporijo, which have been appended as annexure-3 to the petition, it has been pointed out that the writ petitioner's name finds place at serial No. 138 whereas the names of the private Respondents No. 5 & 6 find place at serial Nos. 172 and 171, respectively. As the writ petitioner is admittedly senior to the above private Respondents No. 5 & 6 in the post of casual employee, the impugned appointment of the respondents No. 5 & 6 as W/C employees, according to the petitioner, is illegal for the reason that neither, any Departmental Promotion Committee (DPC) was held nor, any recruitment process was conducted by the State Respondents for appointment as W/C employees to the respondents No. 5 & 6.

5. A counter affidavit have been filed by the State respondents No. 1 to 4 wherein the respondents have not denied the seniority position of the writ petitioner vis-à-vis the private Respondents No. 5 & 6. It has been further stated in paragraph No. 17 of the said counter affidavit filed by the State respondents ***"that the casual labours engaged in the Department concerned, was appointed as W/C staff based on merit, performance and seniority subject to the availability of fund, post and exigency of work. All the casual labours including the petitioner have the right to claim for W/C appointments and their cases will be taken up along with other labours whenever the Departmental Promotion Committee(DPC) is held in the future. The appointment case of petitioner shall be considered when she reach that senior level as her joining as casual labour have been recorded in circle level seniority at Sl. No. 634."***

6. The State respondents after having stated as above, further states in Paragraph No. 13 of the counter affidavit, that the only reason for denial of the appointment of the writ petitioner as W/C employee is that at later period, good performance report was not received from the Officers as well as the petitioner did not submit the requisite qualifying certificate on computer knowledge.

7. The Respondents No. 5 & 6 have also filed their respective counter affidavits in which they have taken the similar stand which the State Respondents have taken in their counter affidavit.

8. Upon hearing the learned counsel for the petitioner Mr. Panging, and the learned Government Advocate Ms. Wangmu, it has remained undisputed that the writ petitioner is senior to the Respondents No. 5 & 6 as casual employee. It has also remained undisputed that the impugned appointment of Respondents No. 5 & 6 as W/C employees was neither preceded by a recruitment process nor any Departmental Promotion Committee (DPC) was held, which, in other words, would indicate that the Respondents No. 5 & 6 were appointed as W/C employees on the basis of pick-and-choose method which is not permissible under the law.

9. In view thereof, the impugned orders of appointment, dated 30.08.2010 appointing the private respondents No. 5 & 6, as W/C employees vide Orders, No. PHECB/ ESTT-40/09-10/29-138, and No. PHECB/ESTT-40/09-10/168-179 issued by the Superintending Engineer, PHE Circle, Bene(Aalo), cannot be sustained in law and is hereby set aside, with a further direction to the respondent authorities to fill up the vacant posts of W/C employees in accordance with law by following the relevant Recruitment Rules, if any, or any relevant Guidelines inforce, for the recruitment of W/C employees by giving wide publicity.

10. With the above directions, the writ petition stands disposed of. There shall be no order as to costs.

JUDGE

Bhask