

IN THE GAUHATI HIGH COURT

**(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA MIZORAM AND ARUNACHAL PRADESH)**

(ITANAGAR PERMANENT BENCH AT NAHARLAGUN)

Writ Appeal No. 22 (AP) of 2010

Writ Appeal No. 26 (AP) of 2010

Writ Appeal No. 27 (AP) of 2010

Writ Appeal No. 28 (AP) of 2010

Writ Appeal No. 29 (AP) of 2010

1. **Writ Appeal No. 22 (AP) of 2010**

Appellant:

Amar Singh,
Son of Late Munsii Singh,
Presently serving as Assistant Urban Programme Officer,
(AUPO), Department of Urban Development & Housing,
Bomdila Division, West Kameng District,
Arunachal Pradesh.

By Advocates :

Mr. P. K. Tiwari,

Mr. R. J. Das,

Mr. K. Sasxena.

-versus-

Respondents:

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
2. The Chief Engineer-cum-Director,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
3. Nich Jacob,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
4. Tai Sangkio,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.

By Advocates:

Mr. P. Taffo,
Standing Counsel for respondent Nos.1 and 2.
Mr. N. Taje (for respondent Nos.3 and 4).

2. **Writ Appeal No. 26 (AP) of 2010**

Appellant:

Ram Janam Tiwari,
Son of Rajendra Uraps Allar Tiwari,
Presently serving as Assistant Urban Programme Officer,
(AUPO), Department of Urban Development & Housing,
Anini Division, Dibang Valley District,
Arunachal Pradesh.

By Advocates :

Mr. P. K. Tiwari,
Mr. R. J. Das,
Mr. K. Sasxena.

-versus-

Respondents:

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
2. The Chief Engineer-cum-Director,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,

Itanagar, Arunachal Pradesh.

3. Nich Jacob,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
4. Tai Sangkio,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.

By Advocates:

Mr. P. Taffo,
Standing Counsel for respondent Nos.1 and 2.
Mr. N. Taje (for respondent Nos.3 and 4).

3. **Writ Appeal No. 27 (AP) of 2010**

Appellant:

Pratap Dandapat,
Son of Sadan Dandapat,
Presently serving as Assistant Urban Programme Officer,
(AUPO), Department of Urban Development & Housing,
Jairampur Division, Challang District,
Arunachal Pradesh.

By Advocates :

Mr. P. K. Tiwari,
Mr. R. J. Das,
Mr. K. Sasxena.

-versus-

Respondents:

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
2. The Chief Engineer-cum-Director,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
3. Nich Jacob,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
4. Tai Sangkio,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,

Itanagar, Arunachal Pradesh.

By Advocates:

Mr. P. Taffo,
Standing Counsel for respondent Nos.1 and 2.
Mr. N. Taje (for respondent Nos.3 and 4).

4. **Writ Appeal No. 28 (AP) of 2010**

Appellants:

1. Kipe Kamsi,
Son of Late Chokki Kamsi,
Permanent resident of Basar,
P.O. & P.S. Basar,
West Siang District,
Presently serving as Assistant Urban Programme Officer,
(AUPO), Department of Urban Development & Housing,
Zero Division, Lower Subansiri District,
Arunachal Pradesh.
2. Jumbo Nyodu,
Son of Late Lijum Nyodu,
Permanent resident of Basar,
P.O. & P.S. Basar,
West Siang District,
Presently serving as Assistant Urban Programme Officer,
(AUPO), Department of Urban Development & Housing,
Aalo Sub- Division, West Siang District,
Arunachal Pradesh.

3. Mebom Ete,
Son of Late Nyome Ete,
Permanent resident of Darka village,
P.O. & P.S. Aalo,
West Siang District,
Presently serving as Assistant Urban Programme Officer,
(AUPO), Department of Urban Development & Housing,
Pasighat Division, East Siang District,
Arunachal Pradesh.

By Advocates :

Mr. P. K. Tiwari,
Mr. R. J. Das,
Mr. K. Sasxena.

-versus-

Respondents:

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
2. The Chief Engineer-cum-Director,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
3. Nich Jacob,

Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.

4. Tai Sangkio,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.

By Advocates:

Mr. P. Taffo,
Standing Counsel for respondent Nos.1 and 2.
Mr. N. Taje (for respondent Nos.3 and 4).

5. **Writ Appeal No. 29 (AP) of 2010**

Appellant:

Vijai Kumar Rai,
Son of L.L.Rai,
Presently serving as Assistant Urban Programme Officer,
(AUPO), Department of Urban Development & Housing,
Tawang, Arunachal Pradesh.

By Advocates :

Mr. P. K. Tiwari,
Mr. R. J. Das,
Mr. K. Sasxena.

-versus-

Respondents:

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
2. The Chief Engineer-cum-Director,
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
3. Nich Jacob,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
4. Tai Sangkio,
Assistant Urban Programme Officer (AUPO),
Department of Urban Development & Housing,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.

By Advocates:

Mr. P. Taffo,
Standing Counsel for respondent Nos.1 and 2.
Mr. N. Taje (for respondent Nos.3 and 4).

BEFORE

**THE HON'BLE MR. JUSTICE I. A. ANSARI
THE HON'BLE MR. JUSTICE P. K. MUSAHARY**

Date of hearing : 07.01.2011.

Date of delivery of Judgment : 07.01.2011.

JUDGMENT & ORDER

(Oral)

(Ansari, J.)

1. Heard Mr. P. K. Tiwari, learned counsel for the appellants, and Mr. P. Taffo, learned Standing Counsel for respondent Nos.1 and 2. Also heard Mr. N. Taje, learned counsel for respondent Nos.3 and 4.

2. An order, dated 16.4.2007, was published by the Public Works Department, Govt. of Arunachal Pradesh, directing encadrement of 10 posts of Junior Engineer of Public Works Department with the Department of Urban Department and Housing, Govt. of Arunachal Pradesh, on rotational basis for a period of three years. Following the publication of the order, dated 16.6.2007, aforementioned, another office order was

made, on 28.11.2007, by the Public Works Department, Govt. of Arunachal Pradesh, whereby the present appellants and the private respondents, namely, respondent Nos.3 and 4 herein, were transferred, on encadrement basis, for a period of three years, to the Urban Development Department, Govt. of Arunachal Pradesh. Pursuant to the office order, dated 28.11.2007, the appellants as well as the private respondents joined their posts of Junior Engineer in the Urban Development Department, Govt. of Arunachal Pradesh. While the appellants and the private respondents were so serving in the Urban Development Department, an order was made on 26.8.2009, by the Urban Development Department, Govt. of Arunachal Pradesh, permanently absorbing the private respondents, namely, Nich Jacom (respondent No.3) and Tai Sangkio (respondent No.4), in the Department of Urban Development on the basis of no objection certificates obtained from the authority concerned to the permanent absorption of the private respondents in the Department of Urban Development as Assistant Urban Programme Officer (AUPO).

3. On the absorption of the private respondents, the appellants, too, made representations seeking their absorption in the Urban Development Department and, in this regard, the Public Works Department issued to them (appellants) too

requisite no objection certificates to the appellants' absorption in the Urban Development Department. Without, however, considering the cases of the appellants for absorption, an order was made, on 14.5.2010, repatriating the appellants to their parent department, namely, Public Works Department.

4. Aggrieved by the fact that the private respondents had been absorbed, as indicated above, without considering the cases of the present appellants, who had also been given no objection certificate in the same manner as had been given in favour of the private respondents by the Public Works Department, Govt. of Arunachal Pradesh, the appellants filed writ petitions under Article 226 of the Constitution of India, which gave rise to WP(C) Nos.182(AP)/2010, 185(AP)/2010, 199(AP)/2010, 228(AP)/2010 and 316(AP)/2010 challenging therein the absorption of the private respondents, the ground of challenge being that the absorption of the two private respondents were arbitrary, illegal and discriminatory in nature inasmuch as the private respondents had been chosen without following any norm and that while considering the cases of the private respondents for absorption, the cases of the writ petitioners (the appellants) who, too, were similarly situated, had not been considered at all, though the cases of the writ petitioner(i.e., the appellants) too ought to have been considered

as they were similarly situated as the private respondents. This apart, the appellants also contended, in the writ petitions, that their repatriation was illegal and malafide inasmuch as they had been brought, on rotational basis, for a period of three years and while two of the persons, who were so deputed, had been absorbed, the cases of the remaining deputationists had not been considered and they were, rather, sought to be repatriated without allowing them to complete their respective periods of deputation.

5. The State as well as the private respondents resisted the writ petitions. Since it is the State respondents, who have made the order of absorption, they were and they are in the best position to show as to why and how the private respondents had come to be absorbed. In this regard, it is noteworthy that in para 6 of the Affidavit-in-Opposition, the State respondents have, while denying that the writ petitioners were being discriminated against, contended that the private respondent Nos.3 and 4 had been absorbed on the availability of two sanctioned vacant posts in the category of "first come first serve basis". Thus, the basis of absorption, according to the State respondents, were two, namely, that there were two vacant sanctioned posts available for absorption and the absorption of the said two private respondents were on the basis of "first come first serve".

6. As far as the private respondents are concerned, their case was that having been absorbed legally, the question of their absorption being disturbed does not arise at all.

7. By a common judgment and order, dated 30.09.2010, all the writ petitions having been dismissed by a learned Single Judge of this Court, the writ petitioners have preferred the present five appeals, which have been heard together and are being disposed of by this common judgment and order.

8. While considering the present appeals, it needs to be borne in mind that a person, on deputation, has no indefeasible right to be absorbed by the borrowed department. This apart, the borrowed department cannot absorb a deputationist without the consent of the parent department. Even when these two conditions are satisfied, there is yet another condition imposed on the borrowed department, the condition being that the department, being a wing of the State, must conduct itself in a manner, which is fair and just to persons similarly situated. While, therefore, making any order of absorption of a deputationist, it is incumbent on the part of the State to ensure that all persons, similarly situated, are considered for absorption if they too are willing to be absorbed. A deputationist, as indicated hereinbefore, has no indefeasible right to demand his

absorption, but he has, undeniably, a right to demand a fair treatment and a fair treatment would mean that he to be considered in the same manner and in the same way as the other similarly situated persons.

9. In the case at hand, the dates of joining of the appellants and the private respondents are as under :

Sl. No.	Name	Date of joining as AUPO
1	Ram Janam Tiwari	24.12.2007
2.	Pratap Dandapat	16.01.2008
3.	Vivai Kumar Rai	27.12.2007
4.	Amar Singh	17.01.2008
5.	Kipe Kamsi (Appellant No.1)	01.01.2008
6.	Mebom Ete (Appellant No.3)	24.12.2007
7.	Jumto Nyodu (Appellant No.2)	14.12.2007
8.	Tai Sangkio (Respondent No.4)	24.12.2007
9.	Nich Jacob (Respondent No.3)	14.12.2007

10. A careful examination of the pleadings of the parties and the materials on record show that the private respondent No.3, namely, Nich Jacob, joined the Urban Development Department on 14.12.2007 and the private respondent No.4, namely, Tai Sangkioi, joined on 24.12.2007. Since the State respondents contend that these private respondents were absorbed by following the principle of “first come first serve” we are bound to test the correctness of this statement. When we closely examined

the dates of joining of the parties concerned, we notice that the appellant, Jumto Nyodu, had joined the Urban Development Department on 14.12.2007; he was, therefore, similarly situated as respondent No.3 and his case could not have been ignored before opting to absorb respondent No.4, namely, Tai Sangkio, whose date of joining was much later inasmuch as respondent No.4 joined his post, on deputation, on 24.12.2007. This apart, even the appellant, Mebom Ete, had joined his post, on deputation, on the same date, i.e., on 24.12.2007, as did private respondent No,4 and he(i.e.,Mebom Ete) ought to have, therefore, been considered for absorption, along with private respondent No,4, namely, Tai Sangkioi.

11. From what has been pointed out above, it is glaringly noticeable that though the State respondents have claimed that the basis of absorption was “first come first serve”, this principle was really not followed. Thus, the State respondents, while absorbing the private respondents, did not consider the cases of the appellants at all and did not follow any norm inasmuch as it can be seen from the above discussion that the question of absorbing respondent No.4 could not have arisen without considering the cases of the other appellants. The act of absorption of the private respondents cannot but be regarded as wholly arbitrary.

12. What logically follows from the above discussion is that the appellants have been denied a fair treatment by the State respondents and they were clearly discriminated against the private respondents. No basis for the purpose of making absorption was, as a matter of fact, followed and that is why the basis, which was claimed to have been followed, is clearly found to be incorrect.

13. Situated thus, we cannot but hold that the absorption of the private respondents was illegal, arbitrary and suffered from denial of a right of fair treatment to the present appellants. The absorption of the private respondents cannot, therefore, be allowed to stand good on record.

14. We are conscious of the fact that in the writ petitions, the appellants have not specifically sought for setting aside and quashing of the orders of absorption of the private respondents; but we cannot be unmindful of the fact that on the basis of the facts, which are found to have been clearly established on record, it is the duty of the Court, particularly, a Court , exercising writ jurisdiction under Article 226 of the Constitution of India, to mould the relief and grant the relief(s), which the parties concerned deserve.

15. In the face of the facts of the present case and the attending circumstances, we are clearly of the view that the orders of absorption of the private respondents, being glaringly illegal, arbitrary and discriminatory in nature, cannot be sustained and since they were absorbed against two sanctioned vacant posts, the State respondent's decision to fill the said two posts by absorption has to be carried in accordance with law by considering afresh the cases of not only the private respondents but also of the appellants for the purpose of absorption against the said two sanctioned posts, which would, now, fall vacant as a result of the absorption of the private respondents having been set aside and quashed. The State respondents shall also remain at liberty to consider the cases of the appellants and private respondents for absorption against such other posts as may be available, but consideration of such absorption too and the decision thereon shall be taken in accordance with law.

16. With the above end in view, we set aside and quash the order, dated 26.8.2009, whereby the private respondents were absorbed, and we direct the State respondents to consider the cases of the present appellants as well as the private respondents for absorption against the two posts, which the private respondents have been so far occupying. We also leave

the State respondents at liberty to pass such other appropriate order(s) of absorption, as may be deemed necessary, should more posts become available for such absorption. We further direct that the exercise of consideration of the cases of the appellants and the private respondents, for the purpose of their absorption, as directed above, shall be completed within a period of six weeks from today.

17. With the above observations and directions, the writ appeals shall stand disposed of.

18. No order as to costs.

JUDGE

JUDGE

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