

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

ITANAGAR BENCH

WP (C) 198 (AP) 2011

Mr. Tapu Mosu
S/o Taji Mosu, C/o Assistant Engineer, PHE & WS,
Sub-Division Nacho, District Upper Subansiri, A.P..

.....Petitioner

Advocates for the Petitioner:

Mr. K. Jini
D. Kamduk
T. Bayor
D. Loyi
T. Doyi

-Vs-

1. The State of Arunachal Pradesh, represented by the Commissioner and Secretary PHE & WS, Govt. of Arunachal Pradesh, Itanagar.
2. The Chief Engineer, Eastern Zone, Department of PHE, Govt. of Arunachal Pradesh, Itanagar.
3. The Superintending Engineer, PHE & WS Circle, Bene, District West Siang, Arunachal Pradesh.
4. The Executive Engineer PHE & WS Division, Daporijo, Upper Subansiri District (AP).
5. Mr. Ranjit Devnath, WC(T) Mazdoor, PHE & WS Division, Pasighat, East Siang District (A.P.).
6. Mr. Linya Bogo, WC (T) Fitter, PHE & WS Division, Daporijo Upper Subansiri District (AP).

.....Respondents.

Advocates for the Respondents:

Ms. G. Deka, Sr. Govt. Advocate (AP)

BEFORE**HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

Date of hearing : 08-04-2015
Date of Judgment & Order : 08-04-2015

JUDGMENT & ORDER(ORAL)

Heard Mr. Kento Jini, learned counsel appearing for the petitioner. Also heard Ms. Geeta Deka, learned Sr. Govt. Advocate appearing for the State Respondents.

1. The case of the petitioner is that he is presently serving as a casual Pipe-Fitter under PHE Sub-Division, Nacho, in the District of Upper Subansiri, since 01.10.1984, till date, without any break. However, after his employment as casual labour, he had appeared in the CBSE-X Examination in the year 1988. Accordingly, the petitioner joined as a casual staff and started discharging his duties with utmost sincerity. While acknowledging the petitioner's sincere services to the department, the Assistant Engineer, PHE & WS, sub-division, Nacho, under whom the petitioner is working, has issued certificates to the petitioner on 27.08.1997, certifying that the petitioner is working as a contingency labour from 01.10.1984 to 30.09.1995. It is the contention of the petitioner that he has been engaged as a casual staff in the Department of PHE & WS, since 1984, without any break. Therefore, the petitioner has been pursuing the authorities concerned to regularize him in the said Department. The other contention of the petitioner is that if any vacancy happens to arise in the department, the authority may appoint him as WC(T) employee.

2. The petitioner has further submitted that after submission of such an application to the authorities, he was eagerly waiting for positive response from the authorities to promote him to the higher post of W/C staff. While the petitioner was waiting thus for his appointment as W/C(T) worker, to his utter shock and surprise, he came to know through RTI that the respondent authorities illegally and in a discriminatory manner, had given promotion to his juniors who were much junior to the petitioner.

3. For redressal of his grievances, the petitioner has submitted numerous representations to the concern authorities for the post of W/C Mazdoor and the Executive Engineer, PHE & WS Division, Daporijo, Upper Subansiri District, has forwarded one of such application, for necessary action to promote the petitioner to the post of W/C(T) Mazdoor, vide order dated 03.05.2010 to the Superintendent Engineer, PHE & WS circle, Bene(Aalo) West Siang District, which is still pending before the authority.

4. The petitioner further contends that as per records furnished to the petitioner through RTI by the Superintending Engineer, PHE & WS Circle, Bene, the total strength of the casual labour stood as 1100 and total strength of W.C. Staff appointed w.e.f. 2005 under PHE & WS Circle, Bene, is 84. In the said list, the date of engagement of the petitioner is shown as in the year 1984 and he is placed at serial No. 45 of the seniority list of the casual staff of all Divisions so prepared by the superintending Engineer, PHE & WS Circle, Bene, Aalo. Since then the petitioner is working as casual labour at PHE & WS Division, Daporijo, in the District of Upper Subansiri, Arunachal Pradesh.

5. The petitioner has further contended that the authorities instead of promoting/appointing the petitioner to the higher post of WC (T) and without maintaining the seniority position in the Department, has in a most illegal manner, have appointed his juniors to the higher post of WC (T) employees in different categories. The petitioner belongs to a very poor family background and being a casual labour, he is faced with financial constraint, and as such, he could not implead all his juniors, as party respondents, in the instant writ petition despite their supersession, but, he has impleaded two of his juniors as respondent No. 5 & 6 in the instant writ petition, who were given promotion in the posts of WC (T), in the year 2008 and 2009 respectively. The promotion order of the said respondents has been recently come to the knowledge of the petitioner recently through RTI only. It may not be out of place to mention here that the private respondents has been regularized without conducting Trade Test/DPC as such, this Court has to interfere with such discriminatory action of the respondent authorities to prevent exploitation of its employees and for regularization of the petitioner in the post of WC (T) like that of the private respondents in the Department of PHE & WS, Bene Circle, Aalo, for the interest of Justice.

6. It is pertinent to mention here that the PHE & WS Department, Govt. of Arunachal Pradesh has not framed any scheme for regularization of their casual employees serving in the department. But from time to time, when the sanctioned posts of WC are lying vacant, the casual employees are being regularized on the basis of seniority, serving in their respective Divisions and Sub-Divisions in the Public Health Engineering Department, Govt. of A.P., However, in the instant case, the respondent authorities, in a most illegal manner, have appointed the private respondents No. 5 and 6 as WC, on temporary basis, without considering the case of the petitioner by discarding the seniority position. But despite existence of the vacant post, the respondent authorities without considering the case of the petitioner has in most illegal manner appointed his juniors as WC employees on temporary basis in the Department, superseding the petitioner, inasmuch as all the three casual staffs appointed as work charge staffs are far juniors to the petitioner.

7. The petitioner states that as per general Rule of the WC staff is concerned, in the context of central Govt., they are employed on the actual execution of a specific work, sub-works of a specific work, etc.. But in the context of Arunachal Pradesh, the WC staff are considered to be regular employee of the Department, having their Head of Accounts. Therefore, all labour in the works department are appointed as casual labour and the moment the casual staff are appointed as WC staff, they are treated as regular employees of the said Department. Accordingly, the superintending Engineer can create temporary posts in the work charged establishment and all such posts in WC establishment is to be filled up from amongst the persons working on the Muster Roll and they should possess requisite experience of a minimum of two years continuous service as muster Roll workers in the PWD. However, despite such Manuals, the Govt. of A.P. has not adopted the same and the PHE Department has regularized the casual employees by way of promotion/appointing then as WC(T) staff on temporary basis without conducting any trade test as precedent in the department. As such, the petitioner too deserves equal treatment with that of the employees who have been already regularized as WC(T) employees on temporary basis in the Department. Therefore, he is entitled to be regularized against the vacant post without any hindrances, along with his juniors, as his seniors, whose services were regularized earlier were also done without any test.

8. The petitioner has also contended that the action of the respondents in not regularizing/appointing the petitioner in the post of WC in the Department and allowing him to work for more than 26 years as casual labour in the department without giving any service benefit is highly arbitrary, whimsical and violative of Articles 14, 16, 21, 23 and 39 of Constitution of India. The respondent authorities by adopting pick and chose policy regularized the petitioner's juniors in the same department who were working as casual labourers but did not consider the case of petitioner is illegal and arbitrary and therefore is liable to be interfered by this Hon'ble Court for the ends of Justice. Being aggrieved of the aforesaid action of the respondents, the petitioner filed a representation before the respondents but that evoked no response from the said respondents. The petitioner has further submitted that the services of the petitioner can still be regularized by the respondent authorities on the basis of seniority since he has been allowed to work as casual labour for about 26 years without any regularization which amounts to forced labour and denial of equal pay for equal work and as well curtailing the right to live with dignity, and threat of infringement of fundamental rights guaranteed under article 14, 16, 21, 23 of the Constitution of India.

9. The State Respondents have filed their affidavit-in-opposition wherein it has been contended that as per the statement of the petitioner himself, he has been working under PHE & WS Sub-Division, Nacho w.e.f. 01.10.1984 and passed the Class-X examination in the year 1988 but as per the relevant Annexure, the Assistant Engineer, PWD Sub-Division, Taliha, had issued the certificate to the effect that the petitioner was working under the PWD w.e.f. 1984 i.e. at the age of 12 years and was transferred to PHED on 30.09.1995. The contention of the petitioner that he had passed the Class-X CBSE Exam in 1988 cannot be possible without attending regular classes in the school which will mean that continuous service in the Department is not possible. A separate departmental inquiry is being conducted to find out the reason for allowing the petitioner to serve as a casual labour at the age of 12 years and allowing him to appear the CBSE exam without attending regular classes or without performing duty in the department and as such, his seniority can not be finalised till the fact is unearth.

10. The further stand of the State Respondents is that the performance report of the petitioner was stated to be very good and satisfactory which appears

to be not correct as he attended the class and appeared the Class-X CBSE examination in 1988 without performing the Govt. duties and thus, the performance of an irregular person can not be treated as very good and satisfactory. The petitioner passed the Class-X examination in 1988 which is not possible without any break in service. Hence his casual service may be treated as continuous i.e. without break w.e.f. the last date of appearing the Class-X examination preferably from the month of April/1988 which shall be finalized after the departmental inquiry is conducted. The utmost care is taken to consider the grievances of the casual labours for considering their cases for appointment of WC (T) staff based on sincerity and performance. The lone application of the petitioner under reference was simply forwarded by the Executive Engineer, Daporijo, without recommendation, for W/C (T) appointment. The application of the petitioner was also not recommended by the Assistant Engineer, PHE Sub-Division, Nacho. There are more than 18 (eighteen) labours under Daporijo Division who are senior to him, as such, his case for W/C appointment could not be considered till date. His case can be considered in near future based on the availability of the vacant post and fund position of the department. The seniority list referred to by the petitioner is a tentative list which is yet to be finalised. However, the WC appointments are made based on the performance and seniority.

11. The further stand of the State Respondents is that the case of petitioner could not be considered due to lack of strong recommendation by the field officers and presence of more senior labours than him. The lone application of the petitioner forwarded by the Executive Engineer, Daporijo, was received on 19th May 2010 and no other application or any other recommendation from his higher authorities was received prior to the said application. The appointment of WC staff is considered Division wise, till date, basing on the performance and seniority. The juniors can be considered for WC appointment if his/her performance is better than the non-productive seniors. Here, the respondent Nos. 5 & 6 were appointed in 2008 and 2009 against Pasighat and Yingkiong Divisions respectively basing on the performance reports and extra knowledge in other fields like experience on official procedure of banks, treasury Office, Accounts in Division Office and special training course on Water Quality Assurance conducted by Director, DRL, Tezpur. Hence, these private respondents are better than the petitioner and question of comparison does not arise. There is no regular and permanent post of WC

employee in the PHE department and the orders for extension of temporary posts are accorded yearly by the state Government and hence, question of regular/permanent appointment does not arise.

12. The State Respondents have also submitted that the Recruitment Rules for WC employees in the PHE Department is yet to be approved by the State Government and the modalities for conducting the trade tests are yet to be finalized and the test could not be done properly. However, the performance reports of labourers are obtained from the field officers through recommendations. In some cases, verbal and telephonic confirmations are obtained from them in addition to the written documents regarding the performance of labours. It is again reiterated by the State respondents that the lone application of the petitioner without proper recommendation from the Executive Engineer, Daporijo, was received in May 2010. Sufficient time was not given to the appointing authority to consider his case. Hence question of negligence and no response does not arise. His case can be considered for WC(T) appointment in future alongwith other senior candidates whenever vacant posts are available. All the casual labours in the department cannot be regularized at one go due to lack of fund and post. The principle of the "survival of the fittest" is to be adopted in the department and the best among the best are selected through examination, trade test, recommendation of the field officers based on performance and seniority etc. The seniority is not only the criteria for final selection in the department. In the present context, there are more seniors to the petitioner under Daporijo Division itself. The merits and demerits of all candidates are to be thoroughly examined before taking a final decision.

13. I have heard the submissions of the learned counsel for both the parties. The grievances of the petitioner basically centred around on the point that the respondent authorities have ignored the case of the petitioner and has acted upon on pick-and-choose policy while appointing the other casual labourers to the post of WC, who are much junior to the petitioner.

14. The learned counsel for the petitioner Mr. Jini, has also vehemently urged that the case of the respondents is itself not maintainable which is vague itself and fail to put forward any cogent reasons for appointing junior persons. By

referring to the paragraphs No. 8, 11, and 21 of the affidavit, it has been contended by the petitioner that the respondents itself are not clear as to the age of the petitioner and though they tried to challenge the age and education of the petitioner but they failed to brought anything on record to rebut the case of the petitioner. On the other hand, the petitioner has brought on record that his date of joining is 01.10.1984 and continuing till date, to the satisfaction of the authority.

15. On the other hand, Ms. Deka, learned Senior Government Advocate, who has apprised that they can consider the case of the petitioner in the event of vacancy when it arises in the near future along with the requisite fund. It has also been apprised that a screening committee has been formed for posting of employees to the WC and also for regularization thereof. It has also been contended that seniority is not the sole criteria for getting promotion and the respondents who were been given promotion has extra qualification like training etc., for which they have been chosen. But after appreciation of the affidavits of the respondents, it is apparent that they have not submitted a single piece of document to establish their assertion. There is absolutely nothing to show that why the seniority of the petitioner was not considered. On the next, it is also to be noted that the respondent authorities have not challenged the list of seniority list so furnished by the petitioner and prepared by Department of respondents and the other documents like certificate/forwarding letter given by the Executive Engineer, and Assistant Engineer, certifying the service of the petitioner which reveals that the petitioner was found suitable in all respects while discharging his duties. All these documents supported the case of the petitioner that inspite of being a suitable person and a senior employee, his case was not considered by the respondent authorities. The State Respondents have failed to brought anything on record to satisfy the court about the criteria for holding such examination and the findings of authority regarding suitability of private respondents over the petitioner. Except raising inconsistent pleas, the State Respondents could not justify their stand, as to on what specific considerations, the private respondents No. 5 and 6, were appointed. However, we do not propose to disturb the appointments so made to the said private respondents.

16. The learned counsel has relied upon the case law reported in **1989 supp. (2) SCC 351 Bal Kishan v. Delhi Administration & anr.**, wherein it has been

held that promoting a junior without considering the case of senior is impermissible. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of the senior. Any deviation from this principle will have a demoralising effect in service apart from being contrary to the Articles 16(1) of the Constitution. Again by applying the test of **next below rule**, as laid down in **R. K. Sethi & anr. Vs. ONGC & anr.** reported in **1997(10) SCC 616**, the case of the petitioner had to be considered from the date when his juniors were promoted to the post of WC fitter by applying the same norms, yardsticks and parameters.

17. In view of all above and the legal pronouncement, this writ petition is hereby disposed of directing the respondents to consider the case of the petitioner for promotion to the post of WC(T) Fitter from the date when his juniors/private respondents No. 5 and 6, were promoted to such posts. The Screening Committee which has now been formed by the State respondents, shall examine and decide the case of the petitioner, for promotion, as stated above, as expeditiously as possible preferably within a period of 4(four) months from the date of receipt of a certified copy of this order. The petitioner shall submit all the relevant documents before the Screening committee, for the said purpose.

18. No order as to costs.

JUDGE

Bikash