

IN THE GAUHATI HIGH COURT

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

ITANAGAR BENCH

WP (C) 281 (AP) 2012

Ms. Pate Yakia,
Wife of Shri B.K. Tungri,
Resident of Banderdewa,
P.O. & P.S. : Banderdewa,
District : Papum Pare,
Arunachal Pradesh.

..... **Petitioner.**

- VERSUS -

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Urban Development and Housing,
Government of Arunachal Pradesh,
Itanagar.
2. The CE - cum - Director ,
Urban Development and Housing,
Government of Arunachal Pradesh,
Itanagar.

..... **Respondents.**

Advocates for the Petitioner : Mr. A.K. Roy,
Mr. H. R. Obing,
Mr. T. Das,
Mr. D. Lazi.

Advocate for the Respondents : MP. Taffo,
Standing Counsel
Urban Development and Housing.

- BEFORE -

THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Dates of Hearing and Judgment & Order : 15th July, 2014.

JUDGMENT & ORDER (ORAL)

Heard Mr. A.K. Roy, learned counsel for the petitioner and Mr. P. Taffo, learned Standing Counsel for the respondents, Urban Development and Housing, Government of Arunachal Pradesh.

2. Mr. A.K. Roy, learned counsel for the petitioner submitted that in pursuance to an Advertisement dated 04-09-2002 for the post of Peon (Group-D) published by the respondent No. 2, the Director of Urban Development and Housing, Government of Arunachal Pradesh, Itanagar; the petitioner, Miss Pate Yakia, applied for the same. Accordingly, on 29-05-2003, the respondent No. 2, issued her a call letter with Roll No. 694, directing her to appear before the Interview Board in the Chamber of the Director of the Urban Development and Housing Department at Itanagar for her viva-voce test to be held on 15-07-2003. In pursuance of the same, the petitioner appeared in the said viva-voce test on 15-07-2003. Subsequently, on 19-10-2004, the respondent authorities appointed the petitioner in the vacant post of Peon under the Urban Development and Housing Department of the State and posted her at Yupia in the pay scale of Rs. 2500 – 3200/- p.m. plus other allowances admissible under the rules. Accordingly, she joined her services as Peon under the respondent authorities on 20-10-2004.

3. The respondent authorities on 07-03-2006 issued a show cause notice to the petitioner stating that her appointment as Peon under the respondent authorities was illegal and without any existing sanctioned post and petitioner replied to the said show cause notice. In spite of that the respondent authorities, without considering her show cause reply and without giving her an opportunity of hearing, vide order dated 17-05-2006, terminated her service as Peon under it with effect from 01-04-2006 in pursuance of sub-rule (1)(a) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965.

4. Being aggrieved with the said termination order dated 17-05-2006, the petitioner approached this Court in WP(C) 263 (AP) 2006 and after hearing the learned counsel for the parties vide judgment and order dated 15-03-2007, this Court dismissed the said Writ Petition of

the petitioner along with some other connected writ petitions holding that the Vigilance Department in its report dated 24-01-2005 clarified that the petitioner herein was appointed beyond the merit list and the respondent authorities, in compliance of the provisions Rule 5(1)(a) of the Central Civil Service (Temporary Service) Rules, 1965, terminated the service of the petitioner after giving her one month's prior notice.

5. Against the same, the petitioner preferred Writ Appeal No. 21 (AP) 2008 and this Court in Division Bench vide order dated 23-03-2010 allowed the said Writ Appeal preferred by the petitioner, set aside the judgment and order dated 15-03-2007 passed by learned Single Judge in WP(C) 263 (AP) 2006 and also the impugned order of termination of the petitioner dated 17-05-2006 passed by the respondents, Urban Development and Housing Department, Arunachal Pradesh and made it clear that the respondent authorities desire, they may proceed against the petitioner afresh in accordance with law.

6. The petitioner on 29-03-2010 submitted the certified copy of the said judgment and order dated 23-03-2010 passed by Hon'ble Division Bench in WA 21 (AP) 2008 before the respondents herein.

7. Mr. Roy, learned counsel for the petitioner submitted that though the order of termination of the petitioner's service dated 17-05-2006 was set aside by the judgment and order dated 23-03-2010 passed by Hon'ble Division Bench in Writ Appeal No. 21 (AP) 2008, instead of complying the same and reinstating the petitioner in her service as Peon, the respondent authorities on the other hand initiated a department proceeding against the petitioner and on 30-11-2010 issued a show-cause notice to her as to why her appointment dated 19-10-2004 as Peon under the Directorate of Urban Development and Housing should not be held as void and illegal, as her said appointment was beyond the actual merit list and sanctioned strength. Along with the said show cause notice dated 30-11-2010 (Annexure-H to the petition), the respondent authorities issued her the article of charges framed against the petitioner with the vigilance report dated 24-01-2005.

8. Subsequently, the respondent No. 1, the Secretary, Urban Development and Housing Department, Government of Arunachal Pradesh by his order dated 11-01-2011 (Annexure-I to the petition) initiated an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [CCS (CCA) Rules, in short] against the petitioner in exercising his power conferred by Rule 14 (2) & (22) of the CCS (CCA) Rules, 1965 and appointed one Ms. Sumedha, Deputy Secretary of the Department as the Inquiry Officer to inquire into the charges framed against the petitioner directing the said Inquiry Officer to do the proceeding and submit the report on priority basis.

9. Accordingly, the said Inquiry Officer on 14-02-2011, issued notice to the petitioner directing her to appear in person on 17-02-2011 before her for a preliminary hearing and also asking her to intimate the name the defence assistant if any stating that failure on her to appear on the said date, the inquiry will proceed ex-parte.

10. Being aggrieved with such action of the respondents herein the petitioner has filed this petition praying before this Court for setting aside the disciplinary proceeding initiated by the respondents against the petitioner vide show cause notice dated 30-11-2010 and also the subsequent orders passed by the respondents.

11. Mr. Taffo, learned Standing Counsel appearing on behalf of the respondents – Urban Development and Housing, Government of Arunachal Pradesh herein, by filing an affidavit on their behalf, contended that the then Director of the Department Shri A. Morang, illegally appointed the petitioner beyond the select list and the sanction strength and further submitted that the Hon'ble Division Bench in its judgment & order dated 23-03-2010 passed in WA No. 21 (AP) 2008 observed that if the respondent authorities desire they may proceed against the appellant (the petitioner herein) afresh in accordance with law and in that view of the matter the respondent authorities have initiated a fresh departmental proceeding against the petitioner by issuing show-cause notice dated 30-11-2010 to the petitioner. Mr. Taffo, learned Standing Counsel for the respondents however admitted that the petitioner has not been reinstated in her service under the

respondents, though her termination order dated 17-05-2006 was set aside by the judgment & order dated 23-03-2010 passed in WA No. 21 (AP) 2008.

12. A bare reading of Rule 14 of the CCS (CCA) Rules, 1965 clearly shows that an inquiry or a departmental proceeding can be initiated or for such purpose the disciplinary authority can issue a show cause notice only against the Government Servant under the said Rules. As such, for taking any action under Rule 14 of the CCS (CCA) Rules, 1965 by any authorities against an incumbent, the said incumbent first must be a Government Servant i.e. the incumbent must be in service and no such action can be taken by the authorities under the said provision of the CCS (CCA) Rules, 1965; if the incumbent is no longer in service under the said authority.

13. But in the present case, the petitioner was terminated from her service long back on 17-05-2006 with effect from 01-04-2006 and thereafter the respondent authorities have not reinstated her in service even after the judgment & order dated 23-03-2010 passed in WA No. 21 (AP) 2008 wherein, the said termination order of the petitioner dated 17-05-2006 was set aside by the Hon'ble Division Bench of this Court. But on the other hand the respondent authorities without reinstating the petitioner in service initiated the departmental proceeding against her by issuing show cause Notice dated 30-11-2010.

14. Moreover, on the date of issuance of fresh show cause notice dated 30-11-2010 (Annexure-H to the petition) by the respondent No. 2 and on the date of issuance of the order dated 11-01-2011 (Annexure-I to the petition) by the respondent No. 1, initiating an inquiry against the petitioner under Rule 14 of the CCS (CCA) Rules, 1965, the petitioner was no longer a Government Servant, after her termination from service on 17-05-2006 with effect from 01-04-2006 as the respondent authorities did not reinstate the petitioner in her service under them before issuance of the aforesaid show cause notice and order.

15. As the impugned show cause notice dated 30-11-2010 and the subsequent order of inquiry dated 11-01-2011 (Annexure H & I to the

petition) have been issued against the petitioner, who, at the time of issuance of those show cause notice and the subsequent orders was not a Government Servant, hence, the impugned show cause notice dated 30-11-2010 (Annexure-H to the petition) and the order of inquiry dated 11-01-2011 (Annexure-I to the petition) issued against the petitioner and also subsequent orders passed, if any, in terms of said show cause notice and orders, being in violation of the provisions of the CCS (CCA) Rules, 1965, are hereby set aside and quashed.

16. During deliberation of this matter it is seen that though the Hon'ble Division Bench of this Court by its order dated 23-03-2010 passed in WA No. 21(AP) 2008 set aside the termination order of the petitioner dated 17-05-2006, certified copy of which was also furnished to the respondent authorities on 29-03-2010 by the petitioner and of which order, the respondent authorities are fully aware of, the respondents are yet to comply with the same and the said action of the respondents herein is in complete disregard and in violation of the judgment and order dated 23-03-2010 passed by the Hon'ble Division Bench in WA No.21 (AP) 2008.

17. This writ petition stands allowed to the extent as indicated above. No order as to cost.

JUDGE

Sd/-

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