

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

**WRIT PETITION(C) NO. 514 (AP)/ 2013**

Shri Ojing Darung,  
Son of Late Tanam Darung; a permanent  
resident of Mirem Village: P.O- Bilat;  
PS-Ruksin; Dist.- East Siang,  
Arunachal Pradesh and presently residing  
At D-Sector, Naharlagun; PO/PS-Naharlagun;  
District-Papum Pare, Arunachal Pradesh.

.....

***Petitioner***

**By Advocates:**

***Mr. T. Taki.***

***Mr. T. Tapak,***

***Mr. T. Tabing,***

***Mr. Y. R. Singh,***

***Mr. D. Tali***

***-Versus-***

1. The State of Arunachal Pradesh represented by the Secretary, Labour, Govt. of Arunachal Pradesh, Itanagar.
2. Shri S. De, Sarkar, Director, Information & Technology, Govt. of Arunachal Pradesh and presently appointed as Secretary, Labour Board of Arunachal Pradesh Building & Other Construction Workers Welfare Board (Ex-Officio).
3. The Chief Secretary, Government of Arunachal Pradesh, Itanagar,
4. The Chairman, Arunachal Pradesh Building & Other Construction Workers Welfare Board, Itanagar, Arunachal Pradesh.

***.....Respondents.***

**By Advocates:**

***Mr. K. Ete, Addl. Advocate General***

***Mr. N. Tagia, for Resp. No.2.,***

**BEFORE  
THE HON'BLE MR. JUSTICE C.R.SARMA**

Date of hearing : 27-05-2014

Date of Judgment & Order : 27-05-2014

JUDGMENT & ORDER (ORAL)

Heard Mr. T. Tapak, learned Senior Counsel appearing for the petitioner. Also heard Mr. K. Ete, learned Additional Advocate General, appearing on behalf of the State and Mr. N. Tagia, learned counsel, appearing for respondent No.2.

2. The challenge made in this writ petition is to the appointment letter dated 31-10-2013, issued by the Secretary (Labour), Govt. of Arunachal Pradesh, Itanagar, whereby the respondent No.2 has been appointed as the Secretary to the Arunachal Pradesh Building and Other Construction Workers Welfare Board (Ex-Officio) with immediate effect. The contention of the writ petitioner is that, in view of the provision prescribed by Rule 265 of the Arunachal Pradesh Building and other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006, an officer not below the rank of Labour Commissioner of the Labour Department is to be appointed as Secretary of the Board.

3. According to the petitioner, the respondent No.2, who was holding the post of Director, Information and Technology, Govt. of Arunachal Pradesh has been appointed as Secretary of the Board violating the Rule 265(1) aforesaid, in as much as he was not an officer of the Labour Department.

4. Mr. T. Tapak, learned counsel for the petitioner taking this Court through the said provision, prescribed by Rule 265(1), has submitted that under no circumstances, an officer from outside the Labour Department could have been appointed as Secretary of the Board.

5. Mr. K. Ete, learned Addl. Advocate General, Aruanchal Pradesh, supporting the impugned order has submitted that the said Rule has prescribed that an officer not below the rank of a Labour Commissioner of the Labour Department is to be appointed as Secretary of the Board. The learned Addl. Advocate General has submitted the word "of" used after the words "Labour Commissioner", in the said rule indicates that the rank of Labour Commissioner should be that of the Labour Department and not an officer of the said rank from the Labour Department itself. It is submitted that had there been any intention of the law maker to appoint of a person from Labour Department only, then the word 'of' would have been replaced by the word "from". Therefore, it is submitted that the Government committed no error by appointing the respondent No.2, who was holding the post equivalent to the post of Labour Commissioner.

6. In support of his contention, the learned Addl. Advocate General has referred to the statement made by the respondent No.2 in his affidavit-in-opposition. In the said affidavit-in-opposition, at paragraph 5, the respondent No.2 has clearly stated that his rank was equivalent to that of a Labour Commissioner of the Labour Department

and that he was drawing the pay scale, which was equal to the pay scale given to the Labour Commissioner of the Labour Department.

7. Adopting the said argument, advanced by the learned Addl. Advocate General, Mr. Tagia, learned counsel appearing for respondent No.2, has submitted that the post held by the respondent No.2 being equivalent to the post of Labour Commissioner of the Labour Department, no illegality was committed by appointing the respondent No.2 as Secretary of the Board aforesaid.

8. Having heard the learned counsel appearing for both the parties, I have carefully considered the contention made by the writ petition, the statement made in the affidavits-in-opposition filed by the State and the respondent No.2. I have also perused the provision, prescribed by the Rule 265 of the Arunachal Pradesh Building and other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006. The said rule is quoted as under:-

***" 265. Appointment of Secretary and other Officers:-***

***(1) The Board may, with the prior concurrence of the government, appoint an officer of the government not below the rank of a Labour Commissioner of the Labour Department as Secretary of the Board.***

***(2) The Board may, with the prior concurrence of the government, appoint***

***(i) as many officers of the government, not below the rank of Labour Officers in the Labour Department; and***

***(ii) such other officers and employees as it considers necessary, to***

*assist the Board in the efficient discharge of its functions under the Act.”*

9. A close reading of the said rule indicates that an officer of the Government not below the rank of the Labour Commissioner of the Labour Department is to be appointed as Secretary of the Board. The word, “of” used after the word, “Labour Commissioner”, in the said rule, does not indicate that the officer to be appointed as Secretary must be from the Labour Department only. What the rule aforesaid provided is that the rank of the officer so appointed must not be below the rank of a Labour Commissioner of the Labour Department, thereby meaning that such Labour Commissioner must be working in the Labour Department and not in other department. Therefore, the rule does not require that the officer to be appointed must be from the Labour Department only. In my understanding he can be an officer from the other department also, but his rank must be equal to the rank of a Labour Commissioner of the Labour Department.

10. The learned Addl. Advocate General has submitted that the rank of the Director, Information and Technology, Govt. of Arunachal Pradesh, is equal to the rank of Labour Commissioner of the Labour Department. There is no dispute to the said contention.

11. In his affidavit-in-opposition, the respondent No.2, at paragraph 5, has clearly stated that the post held by him i.e. the post of Director, Information and Technology, Govt. of Arunachal Pradesh, was equal in rank to the Labour Commissioner of the Labour Department, drawing

equivalent pay scale. The said contention, raised by the respondent No.2, has not been challenged by the petitioner. Hence it stood established that the respondent No.2, at the time of appointment as Secretary of the said Board, was an officer of the rank of the Labour Commissioner of the Labour Department.

12. In view of the above, considering the entire aspect of the matter, I have hesitation in holding that an officer of the rank of Labour Commissioner of the Labour Department, even if such officer is from other department, can be appointed as Secretary to the said Board. Hence, I find no force in the argument, advanced by the learned counsel for the petitioner that such officer must be from the Labour Department only. In my considered opinion the term "Labour Commissioner of the Labour Department" refers to the rank of the Labour Commissioner of such department. The term "of the Labour Department" does not indicate requirement of appointment from the Labour department only otherwise the word "from" would have been used in place of the word "of" after the word "Commissioner". Therefore, the Government committed no error by appointing the respondent No.2 as Secretary of the Board aforesaid.

13. In view of the above, I find no merit in this writ petition requiring interference with the impugned order. Accordingly, this writ petition stands dismissed.

No costs.

JUDGE