

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

ITANAGAR BENCH

WP (C) 93 (AP) 2011

Smti. Mumteng Namchoom,
Wife of Sri Chaw Kemmang Namchoom,
Assistant – Water Resource Circle, Namsai,
Employed under respondents in and under
the Water Resources Department of the
Government of Arunachal Pradesh.

..... ***Petitioner.***

- VERSUS -

1. State of Arunachal Pradesh represented by
The Secretary to the Government of
Arunachal Pradesh, Water Resources
Department, Itanagar.
2. The Chief Engineer, Water Resources
Department, Government of Arunachal
Pradesh, Itanagar.
3. The Superintending Engineer,
Water Resources Circle, Namsai.

..... ***Respondent.***

Advocates for the Petitioner : Mr. T. C. Khatri, Sr. Advocate,
Mrs. S. Nag,
Mr. T. Paul

Advocate for the Respondents : Ms. G. Deka,
Addl. Sr. Govt. Advocate,
Arunachal Pradesh.

- BEFORE -

THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Dates of Hearing : 26th March 2014.

Date of Judgment & Order : 19th July, 2014.

JUDGMENT & ORDER (CAV)

Heard Mr. T. C. Khatri, learned Senior Counsel assisted by Mr. T. Paul, learned counsel for the petitioner. Also heard Ms. G. Deka, learned Addl. Sr. Govt. Advocate appearing on behalf of the State respondents.

2. Initially the then Chief Engineer of Rural Works Department (RWD, in short), Itanagar vide order dated 08-08-1988 appointed the petitioner, namely, Smti. Mumteng Namchoom as an Upper Division Clerk (UDC, in short) on adhoc basis for a period of six months with effect from the date of issuance of the said order with the conditions, amongst others, that the adhoc appointment of the petitioner will be automatically terminated on completion of six months or any time without assigning any reason; the said appointment will not confer upon her any right to claim for regular services and seniority etc. in the cadre of UDC on expiring of the term and further consideration for retention/continuation in service will be subject to satisfactory performance of duty as well as qualify in the selection test/interview to be conducted by the D.P.C. to be held in due course of time.

3. By the said adhoc appointment order dated 08-08-1988, the petitioner was posted in the office of the Chief Engineer, Rural Works Department (RWD), Itanagar and in pursuance of the same, petitioner joined in her said adhoc service on 11-08-1988.

4. In the year 1995, the said Rural Works Department in the State of Arunachal Pradesh was trifurcated in to (a) Rural Works Department (RWD), (b) Public Health Engineering Department (PHED) and (c) Irrigation and Flood Control Department (IFCD). On such trifurcation, the petitioner was placed in the Department of Irrigation and Flood Control Department (IFCD), which again in the year 2006 was renamed as Water Resources Department (WRD). The said adhoc service of the petitioner was extended from time to time.

5. The Departmental Promotion Committee (DPC, in short) of the RWD, Govt. of Arunachal Pradesh, in its meeting, held on 18-01-1996 regularised the adhoc service of the petitioner as an UDC and granted her financial benefits and leave encashment etc. as admissible to her with effect from the date of her initial joining on adhoc capacity. Accordingly, the Chief Engineer, RWD, Itanagar vide his order dated 01-02-1996, passed the formal order giving the said benefit of regularisation to the petitioner with effect from 18-01-1996, i.e. the date of sitting of the DPC. Moreover, the then Chief Engineer, RWD vide order dated 13-05-1997 also condoned the intermittent break of adhoc service of the petitioner as an UDC for the period from 01-05-1991 to 02-05-1991 and 01-08-1992 enabling her for entitlement of all financial benefits etc. as provided to her by the aforesaid regularisation order dated 01-02-1996.

6, On 26-12-2004, the petitioner was promoted as Head Assistant of the Department on officiating basis against deputation vacancy and her said officiating promotion as Head Assistant was regularised later with effect from 10-01-2005.

7. In the tentative gradation list dated 14-12-1995 for the post of UDCs under the then IFDC Department, now WRD, the names of (i) Shri Millo Sambyo, (ii) Smti Lufa Suman, (iii) Shri Hage Muba and (iv) Shri Hage Badal were placed at Serial Nos. 21 to 24 respectively, whereas the petitioner was placed at Serial No. 32 though they were appointed in the year 1991 & 1992 only, which was in discrimination to the petitioner, who joined in her service much earlier on 11-08-1988. Subsequently, in the tentative gradation list dated 28-02-2002 as per the DPC Minutes dated 24-06-1997 in respect of the UDCs under IFCD, now WRD, the said four persons were placed at serial Nos. 21 to 24 respectively whereas the petitioner was placed at serial No. 32 again. Thereafter, in the tentative gradation list dated 18-03-2009 for the post of Assistants/Head Assistants under the RWD as per the DPC held on 11-04-2004, names of the aforesaid four

persons were placed at serial No. 7 to 10 respectively, whereas the petitioner was placed at serial No. 18.

8. Being aggrieved with such seniority position/status of the petitioner against those four persons and others, the petitioner has filed this petition praying for a direction to the respondents herein, for regularisation of her service with effect from the date of her initial joining as UDC on 11-08-1988.

9. The petitioner is aggrieved because said four persons joined in their services in year 1991 and 1992 only and whereas the petitioner joined her service under the respondents on 11-08-1998 and she is much senior to them. Moreover, similarly appointed and placed persons, appointed on adhoc basis like the petitioner under the respondents, were regularised by the said respondent authorities from their initial date of joining on adhoc service; but in the case of the petitioner, she was regularised only from the date of holding the DPC on 18-01-1996. Petitioner submitted several representations with her grievances before the respondent authorities during 1998 to 2010 but the same have not yet been considered by the respondents till date.

10. In this petition, petitioner also claimed for the benefit as given to similarly placed persons in the Department whose adhoc services have been regularised from the date of their initial adhoc appointments. To that extent petitioner has annexed some orders/documents of regularisation of adhoc UDCs of her department issued during 1985, 1987 and 2002.

11. The respondents- WRD contested the matter by filling an affidavit. Ms. G. Deka, learned Addl. Sr. Govt. Advocate, appearing on behalf of the State respondents submitted that the said four persons, namely, (i) Shri Millo Sambyo, (ii) Smti Lufa Suman, (iii) Shri Hage Muba and (iv) Shri Hage Badal were appointed in the years 1991 and 1992 following the provisions of Recruitment Rules placing them above the petitioner in the gradation list, as they were inducted in service through open

selection and interview during the year 1991. It is submitted on behalf of the respondents that in the initial appointment order dated 08-08-1988 of the petitioner on adhoc basis, it was specifically mentioned amongst others, that her said adhoc appointment will not confer upon her any right to claim for regular services and seniority etc. in the cadre of UDC on expiring of the term and further consideration for retention/continuation in service will be subject to satisfactory performance of duty as well as qualify in the selection test/interview to be conducted by the D.P.C. to be held in due course of time.

12. Ms G. Deka, learned Govt. Advocate further stated that the service of the petitioner was regularised only from the date of sitting of the DPC, i.e. on 18-01-1996, when it decided to regularise her service as an UDC in the respondents department from the said date as in her initial appointment it was clearly specified that the initial appointment of the petitioner will not confer upon her any right to claim for regular service and seniority in the cadre of UDC. With regard to the regularisation of other adhoc employees of the department from the date of their initial date of joining on adhoc basis as mentioned in the writ petition by the petitioner, Ms. Deka, further submitted that such regularisation of services with effect from their initial date of joining on adhoc basis was done only on the ground that no such terms and conditions or clauses were specified in their appointment orders like that of the petitioner.

13. With regard to the seniority of the petitioner, Ms. G. Deka, submitted that as per the advice of the DPC, the matter of the petitioner had been forwarded to the Senior Analyst, Govt. of Arunachal Pradesh, Ministry of Personnel and Administrative Reforms and Training for fixation of her seniority.

14. Ms. Deka, learned State counsel claimed that no prejudice have been caused to the petitioner as she has been regularised by the DPC and in terms of the conditions

incorporated/as specified in her initial adhoc appointment, petitioner has been given all financial benefits including leave encashment, regularising her break-in service for the period from her initial date of joining on adhoc basis on 11-08-1988;

15. Heard learned counsel for the parties at length. It is seen herein that though the petitioner named the aforesaid four persons, who are placed above the petitioner in the gradation list, but said four persons have not been arrayed as party/respondents in the present petition, neither has she challenged the aforesaid 3 (three) gradation lists. Further, the said four persons have entered in the service through open selection in the year 1991 and 1992. It is also seen from the tentative gradation list annexed to the petition that in between the last of the said four person and the petitioner, there are incumbents above petitioner who have joined their service in the years 1978 to 1987.

16. From the facts and circumstances placed herein above, it is clear that the petitioner is not entitled for her seniority as per the terms and conditions specified in her initial adhoc appointment order dated 08-08-1988, as she accepted her said appointment order with those terms and conditions, which she has not challenge at any time. Moreover, the DPC held on 18-01-1996 decided to regularise her service as an UDC under the respondents-Department with effect from the date of such sitting/holding of the said DPC i.e. 18-01-1996 giving her all financial benefits & leave encashment benefits with effect from her initial date of joining i.e. 11-08-1988.

17. In view of the above, there is no infirmity with the action of the respondents herein regularising her service with effect from 18-01-1996. On the facts and circumstances stated above, the prayer made by petitioner regularising her service as an UDC under the respondents department with effect from 11-08-1988, the date of her initial joining as adhoc appointee cannot be considered by placing her seniority above all those who have

been inducted in service after 11-08-1988 as such persons have not been made parties in this petition.

18. There is no merit in this petition and accordingly it is dismissed. There will be no order as to cost.

JUDGE

Sd/-

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