
(2014) 08 GAU CK 0030

In the Gauhati High Court

Case No : C.M.C. No. 105(K) and W.P. (C) No. 122(K) of 2014

Er. Vipulhou Lhoungu

APPELLANT

Vs

The Nagaland Physical Planner Association (NPPA)

RESPONDENT

Date of Decision : 02-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 226(3)

Citation : (2014) LabIC 4282

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : S. Dutta, Advocate for the Appellant; C.T. Jamir, Sr. Advocate and T.B. Jamir, Advocate for the Respondent

Judgement

Prasanta Kumar Saikia, J.—This application has been filed under Article 226(3) of the Constitution of India praying for modification/alteration/vacation of interim order dated 3/7/2014, passed by this court in W.P.(C) No. 122(K)/2014. Heard Mr. S. Dutta, learned counsel for the applicant and Sri C.T. Jamir, learned counsel for the O.P.

2. The facts necessary for disposal of the present proceeding, in brief, are that the Nagaland Physical Planning Association (in short, the NPPA) represented by its President Mr. S. Takatuba Aier and its General Secretary Sri Tarachu Fithu had filed a petition under Article 226 of the Constitution of India seeking, amongst other things, for quashing the Notification dated 16/06/2014 at Annexure "C" to the writ petition whereby and where under the respondent No. 5 has been appointed as Dy. Director in the Urban Development Department (in short the UDD) on deputation for a period of one year.

3. The Town Planning Department was governed by the Nagaland Town and Country Planning Service Rules 2004. However, by Notification dated 21/11/2008, the nomenclature of the Town and Country Planning Department had been changed to the Urban Development Department (the UDD). That apart, names of various Officers and Staff under the old Town and Country Planning

Department had been re-designated.

4. In that connection, it has been stated that the post of the Town Planner has been re-designated as Dy. Director, whereas the Assistant Town Planner has been re-designated as Assistant Director. On the other hand, the post of Chief Town Planner has been changed to Director, whereas the Senior Town Planner has been re-christened as Joint Director.

5. Under the Service Rule of 2004, the post of Dy. Director is to be filled up by Assistant Director and incumbent in the post of Assistant Director must have possessed certain qualification, such as, 1(a) a Bachelor degree in Agriculture and Civil Engineering with P.G. degree in Town planning, 1(b) P.G. in Geography/Economics/Sociology with P.G., in Town planning and (2) at least experience of 5 years and above as Assistant Town Planner. Under such Service Rules, there is no provision for filling up the post of Dy. Director by deputation. In other words, the post of Dy. Director is 100% promotional post.

6. However, by the Notification dated 16/6/2014, the Respondent No. 5, who is an Officer of Technical Education, has been appointed as Dy. Director on deputation basis for a period of 1 year from the date of his assuming charge of the Office aforesaid. It has been contended that Respondent No. 5 did not possess the requisite qualification necessary for filling up of the post of Dy. Director in the Department of UDD. Moreover, as stated above, the Service Rule of 2004 makes no arrangement, whatsoever, for filling up such post on deputation basis.

7. It is worth noting that in 2004, the Government of Nagaland had issued an Office Memorandum to govern the filling up of the post by way of deputation and in that regard, the Office Memorandum dated 21/08/2004 was issued. As per aforesaid Memorandum certain procedures are to be followed before being brought someone to the borrowing department to serve it on deputation basis. According to applicant, the conditions, stated in Rules 1, 2 and 3 in the aforesaid Memorandum, have huge bearing to the matter in dispute in the present proceeding.

8. For read reference the Rules 1, 2 and 3 are reproduced below:--

"(1) Before deciding to fill up the post on deputation consultation with the NPSC (in case the post comes within the purview of the NPSC) shall be necessary before appointing a person on deputation basis.

(2) Normally a Department should fill up a vacancy on deputation only if there is provision for this in the relevant Service Rules or if the Department requires an officer with specific qualification for a specialized job or personnel with required qualification and seniority within the Department are not available for specific reasons.

(3) Such a vacancy will be invariably advertised through newspapers and official circulars indicating qualifications, experience, other eligibility conditions, last date

of receipt of application etc."

9. It is evident from Clause 1 above that before filling up a post on deputation basis, the consultation with the Nagaland Public Service Commission is necessary. As per Clause 2, a vacancy on deputation can be filled up if the relevant service Rules permit the same or if the department concerned requires an officer not available in the department. On the other hand, Clause 3 requires that the vacancy sought to be filled up by way of deputation is to be advertised through newspapers etc., seeking candidature from the eligible persons. However, all those conditions were thrown to the wind in the case at hand.

10. Being aggrieved, the petitioners Association has submitted an application seeking recalling of aforesaid order. However, such representation was not addressed to by the authority concerned for which the petitioner was forced to file the proceeding under Article 226 of the Constitution of India seeking for quashing the order bringing the Respondent No. 5 on deputation to the UDD. In such a proceeding, the petitioner also filed an application seeking suspension of order aforementioned till the disposal of proceeding numbered as WP? No. 122(k)/2014.

11. This Court by its order dated 03.07.2014 rendered in WP? No. 122(k)/2014 was pleased to pass an order suspending operation of impugned Notification till next returnable date. On being aggrieved, the respondent No. 5 approached this Court by the way of present application under Article 226(3) of the Constitution of India seeking - modification of the interim order passed on 03.07.2014 contending that such order has thrown the Department to the profound difficulties as service of Respondent No. 5 was urgently required by the UDD to execute some matters of extremely vital in nature.

12. In that connection, it has been stated that the order suspending the operation of impugned notification was passed since this court was posted with some wrong and misleading information. In support of such a claim, it has been contended that the allegation of appointment of private respondent in violation of Service Rules is without any substance. According to applicant, the department has been entrusted with varied and diverse duties over the years and in order to carry out such duties more effectively, a separate Cell called Municipal Affairs Cell, (MAC) in the UDD, was created.

13. Furthermore, due to changed situations, the UDD is sought to be bifurcated and creation of an independent department is already under process and in that connection a draft Service Rules under the caption "The Draft Service Rules of Municipal Affair Service, 2012" had already been framed, which is likely to get formal approval from the authority concerned very shortly.

14. Since the department did not have Officer with requisite knowledge and expertise to undertake the newly entrusted duties and responsibilities to the Department, the State respondent was forced to make a lookout for an efficient officer in other department so that the department could conduct its newly

assigned business without facing any hassle. That is how, the private respondent has been brought to the department on deputation basis for a period of 1 year from the date of his assumption of his office.

15. These are also clear testimonies to the fact that the claim of O.P./-petitioners that the applicant was appointed dehors the rules without any truth whatsoever. Rather, the appointment of applicant to the post of Deputy Director and his placement in Urban Development (Municipal Affairs Cell), clearly satisfies the terms and conditions stated in Clause 2 of the Officer Memorandum dated 21.08.2004. So also, the other conditions stipulated in the Office Memorandum dated 22.09.2004.

16. The further case of the applicant was that the applicant did not join his new assignment on 03.07.2014. In fact, he joined in the department well as early as 18.06.2014. However, alleging that the applicant has joined the department only on 18.06.2014, the O.P./petitioners, obtained the stay order in question. However, such a statement was far from the truth. In fact the applicant has joined the new post as back as 18/6/2014.

17. It is a cardinal principle of jurisprudence that a person, who obtains some equitable relief of playing fraud on the court, must not be allowed to enjoy the fruit of such fraud. Not only such benefit needs to be taken away but also the person who secures such relief on making false representation is required to be taken to task. Since the petitioner/O.Ps., obtained the stay order on furnishing false information, on this count alone, such stay is liable to be quashed.

18. The O.P. refuted all those allegations having filed affidavit in reply stating that when a particular service Rules in operation, the Draft Service Rule cannot occupy the space, earmarked for the regular Service Rules. Till date, according to the petitioner/O.P., the Service Rules of 2004 have been occupying space in question and as such, the Draft Service Rules has no application, whatsoever. It is a settled principle of service jurisprudence.

19. Since under the regular service Rules, there is no provision for bringing someone on deputation to the Department and since the post of Dy. Director is 100% promotional post, the State Respondents could not have brought anyone to the Department on deputation against the post of Dy. Director. In regard to the contention that they obtained the stay order under challenge by playing fraud, it has been stated that such a claim too is without any substance though the applicant had tendered his joining report on 18.06.2014, such report was not accepted till the first week of July, 2014.

20. According to O.P., there is gulf of difference between the factum of submitting a joining report to the department and the factum of acceptance of such joining report. A person cannot be said to have arrived in a department merely on submission of joining report, his arrival will be recognized only when his joining report is accepted by the authority concerned.

21. Since on the date on which order was passed by this court, the joining report of the applicant had not yet been accepted by the authority concerned, this court has rightly passed the stay order suspending the operation of impugned notification. More important, on obtaining the stay order in question on furnishing aforesaid information to this court, the petitioner/O.P., committed no wrong, whatsoever.

22. I have carefully considered the rival submissions having regard to the pleaded case of the parties and the documents, attached therewith. On perusal of the record, it is found that there is a Service Rules; the Service Rules of 2004, is in force, to govern the conditions of service including recruitment of the officers and staff of UDD. Since there is a regular Service Rules to govern the conditions of service, the Draft Service Rule can have no application to regulate the conditions of service of me Officers and staffs in the UDD.

23. We have already found that under the Service Rules, 2004, the post of Dy. Director in the department in question is a promotional post and as such, same can be filled up only by promotion, and that too, by Asstt. Directors who, apart from having some educational qualification, must have worked as above continuously for a minimum period of 5 years. Being so, bringing the respondent No. 5 to serve the UDD from the post of Dy. Director on deputation basis is not permissible under the law.

24. One may note here that a particular Department can bring someone on deputation basis, provided the Service Rules so permits to fill up the post by way of deputation. But Service Rules of the Department in question did not make any arrangement to bring someone to the department on deputation basis. This is another reason why the impugned notification bringing Respondent No. 5 to the UDD on deputation needs to be held illegal.

25. The O.M., dated 21.08.2004 governs the filling up the post by way of deputation. One of the criteria for bringing someone on deputation to a particular department is that such department must not have an Officer/staff to man a particular post. In the instant case, there is nothing on record to hold that the department of the UDD did not have any officer to man the post which was sought to be filled up by the respondent No. 5.

26. The Clause 1 of the O.M. dated 21-08-2004 requires that before bringing someone to the Department on deputation, the NPSC needs to be consulted. Further, Clause 3 of the Memorandum again requires the Department to advertise the post sought to be filled up by way of deputation so that all eligible candidates can offer their candidatures to such post. Unfortunately, all those formalities were honoured in clear violation.

27. It is worth noting that Notification dated 15.02.2011, which stood modified to certain extent in view of corrigendum dated 17.11.2012, among other things, states that all the Officers/staff required for running the Municipal Affairs Cell (MAC) would be drawn from the department itself. Such notification therefore,

once again demonstrates that the bringing respondent No. 5 on deputation to the department is not in the tune with terms and conditions stated in the Service Rules.

28. In view of above, I am of the opinion mat the applicant could not make out a case requiring this court to vacate the order in question.

29. In the result, the order dated 03/07/2014 suspending operation of Notification dated 16/6/2014 is hereby made absolute. This Misc. Case stands disposed of.