

(2010) 05 GAU CK 0045

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 284 (AP) of 2009

Kenpi Bam (Ete)

APPELLANT

Vs

State of Arunachal Pradesh & Ors.

RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:

Arunachal Pradesh Government Establishment (Class-III Upper Division Clerk and Lower Division Clerk) Recruitment Rules, 1977 — Schedule 2, Schedule 2

Citation : (2010) 5 GLT 293

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : Advocate appeared for the Petitioner: Mr.T.Son, Advocates appeared for the Respondents: Ms.G.Deka & Mr.H.Lampu, Advocates appearing for Parties

Judgement

B. K. Sharma, J.—By means of this writ petition, the petitioner has prayed for setting aside and quashing of Annexure5 order dated 06.07.09 by which her ad hoc service as LDC (Lower Division Clerk) has been terminated w.e.f. 07.07.09.

2. The petitioner was first appointed as ad hoc Dak Runner for the period from 30.06.96 to 30.12.98 and thereafter she was appointed as office peon vide order dated 07.05.99. While she was working as such, she being a diploma holder in type writing was also engaged in the typing works. By letter dated 05.09.06, she was directed to appear before the selection board on 20.09.06 for typing speed test for selection against short term deputation vacancy of LDC.

3. On receipt of the call letter, the petitioner responded to the same by appearing before the selection board on 20.09.06 and successfully competed in the type speed test. Altogether 15 candidates had appeared and the petitioner secured highest marks and accordingly topped the select list. Thereafter, she was appointed as LDC temporarily on ad hoc basis against a deputation vacancy for a period of one year. The petitioner duly joined the post and started functioning as LDC. By order dated 17.10.07, her term of appointment was extended for another one year or till the deputationist incumbent one Sri Suresh Kumar, LDC

would resume his duty. It was specified that on resumption of duty by the deputationist the petitioner would be reverted to the original post of peon. With such extension of service the petitioner continued in the post of LDC till her service was terminated by the impugned order dated 06.07.09.

4. In paragraph 6 of the writ petition the petitioner has stated that while terminating her service as LDC and reverting her back to the original post of peon, the respondents appointed the respondent No. 4 in her place. Such appointment is with retrospective effect and without holding any selection. Thus, the respondent No. 4 was appointed against the deputation vacancy of Sri Suresh Kumar to which post the petitioner was earlier appointed. It will be pertinent to mention here that said Sri Suresh Kumar has been absorbed in the borrowing department and thus the post has fallen vacant.

5. The petitioner has contended that her service was dispensed with only to accommodate the respondent No. 4 in the deputation vacancy. Further plea of the petitioner is that since she was appointed on the basis of selection, her service ought to have regularized upon absorption of Sri Suresh Kumar in the borrowing department.

6. In paragraph 7 of the writ petition, the petitioner has mentioned about a selection and incorporation of the name of the respondent No. 4 as a wait listed candidate in the select list. In paragraph 8, the petitioner has referred to an interview held on 28.09.08 and 28.12.08 as per the advertisement dated 15.01.08 which according to her was not in connection with the vacancy caused by said Sri Suresh Kumar upon his absorption in the borrowing department. According to the petitioner, the respondent No. 4 was appointed against the said vacancy although there was no selection for the said post. Be it stated here that said Sri Suresh Kumar was absorbed in the borrowing department w.e.f. 17.01.08.

7. In paragraph 10 of the writ petition, upon a reference to the aforesaid advertisement, the petitioner has stated that since the advertisement was only for two posts of LDC, the authorities could not have filled up the vacancies beyond the advertised posts even to the extent of accommodating the wait listed candidate. In paragraph 11, the contention of the petitioner is that the authorities having regularised the services of similarly situated employees, her case also ought to have considered for such regularisation. Agitating her grievance, the petitioner made a representation dated 25.09.08 and the same was forwarded by the controlling officer vide his letter dated 26.09.08. According to the petitioner, she had rendered about 3 V2 years of service as LDC.

8. In paragraph 13 of the writ petition the specific plea of the petitioner is that during the period from 2001-2007 altogether 22 ad hoc LDCs had been regularised by the authorities leaving aside the case of the petitioner alone. The petitioner has annexed the copies of regularization orders which has been marked as Annexure 12 (series).

9. In paragraph 14 of the petition the petitioner has stated about the regularisation of services of as many as 73 LDCs and 23 Peon/Dak Runner during the period from 2005 to 2008. Thus, the petitioner has contended that the authorities have left aside her case alone while accommodating others. Referring to the recruitment rules for appointment to Class III and Class IV posts, the petitioner has contended that she having fulfilled the requirement of the recruitment rules and having been selected for appointment against deputation vacancy, there was no impediment towards continuing her service in stead of making rooms for the candidates beyond the advertised posts. The recruitment rules holding the field is the Arunachal Pradesh Govt. (Establishment Class III Upper Division Clerk and Lower Division Clerk) Recruitment Rules, 1977. As per schedule 2 to the said Rules, the post of LDC is to be filled up 10% by promotion from Record Keeper/ Grade IV employees of Arunachal Pradesh Govt. and recruitment is to be made on the basis of seniority cum merit from amongst the Record Keeper and matriculate Grade IV employees of the Arunachal Pradesh Govt. having three years of continuous service, subject to qualifying the typing speed test conducted by the Govt.

10. In paragraph 17 of the writ petition, the petitioner has referred to extension of service of 4 (four) ad hoc employees working in the post of LDC. According to her she was also entitled to such extension of service with eventual regularisation of the same. In paragraph 18 of the writ petition, the petitioner has referred to the cases of 2 (two) ad hoc LDCs, namely Miss Dakter Kadu and Miss Henjum Bam, whose services were also discontinued by order dated 28.12.08. They had filed a writ petition being WP(C) No. 432 (AP)/2007 and on the basis of the orders passed by this Court, they have been allowed to continue in their services as LDC.

11. It is in the aforesaid backdrop, the petitioner has filed the instant writ petition praying for setting aside the impugned order and continuation of her service as LDC and eventual regularisation.

12. The respondents have filed their counter affidavit denying the contentions raised in the writ petition. Their basic contention is that the petitioner having been appointed on ad hoc basis against the deputation vacancy, she cannot claim continuation in service and automatic regularisation. As regards the selection of the petitioner for appointment as LDC on ad hoc basis, it has been contended that the said selection was against short term vacancy caused by the deputation of Shri Suresh Kumar. The respondents have also referred to Annexure 3 order dated 03.12.07 passed by this Court in WP(C) No. 432 (AP)/2007: Miss Kakter Kadu and Miss Henjum Bam Vs. State of A. P. The writ petition was preferred under similar circumstances as in the instant case and the same was disposed of by order dated 03.12.07 providing consideration of the case of the petitioners for the purpose of allowing them to continue in the post of LDC.

13. The respondents have further contended that the petitioner was reverted to the post of Peon as she was appointed against a deputation vacancy. Further

stand of the respondents is that the post which had fallen vacant upon absorption of Sri Suresh Kumar had been advertised alongwith other posts, but the petitioner did not offer her candidature for selection.

14. The respondent have annexed the copy of the advertisement as Annexure7, on perusal of which it appears that only two posts of LDC were advertised. The respondents have also enclosed the copy of the merit list dated 03.07.09 containing 7 (seven) names in the main list and 7 (seven) further names in the waiting list. The respondent No. 4, namely Miss Kenyir Kamki, is at serial No. 2 in the waiting list. The respondents have also admitted the appointment of 7 (seven) selected candidates and two more candidates from the waiting list. Thus altogether 9 (nine) appointments have been made against two advertised vacancies.

15. In paragraph18 of the counter affidavit, the respondents have admitted continuation of service of Miss Henjum Bam and Miss Dakter Kadu. However, it has been contended that they were so allowed till the recruitment process was over and their services were also dispensed with alongwith the service of the petitioner. As regards the plea of the petitioner that she having qualified in the selection her service is required to be regularised, the respondents have contended that for promotion, the petitioner will have to be selected in a regular selection.

16. The petitioner has filed an affidavit in reply reiterating the stand in the writ petition. Her plea is that her case having been considered for appointment against the deputation vacancy following the procedure laid down in the recruitment rules, upon absorption of the deputationist, her service ought to have been regularised. Her specific plea is that the respondents dispensed with her services only to accommodate the candidates beyond the advertised two vacancies.

17. In the additional affidavit filed by the respondents, it has been contended that after the advertisement, 5 (five) more vacancies had occurred and accordingly the appointments have been made from the select list, although the same was pertaining to two only. In the counter affidavit filed by the respondent No. 4, more or less similar grounds have been urged as in the counter affidavit filed by the official respondents. In the affidavit in reply filed by the petitioner to the said counter affidavit, the aforesaid stand has been reiterated.

18. I have heard Mr. T. Son, learned counsel for the petitioner as well as Ms. G. Deka, learned Addl. Sr. Govt. Advocate. I have also heard Mr. H. Lampu, learned counsel for the respondent No. 4. I Have also considered the entire materials on record.

19. The petitioner was appointed as LDC against a deputation vacancy pursuant to a selection. As per the recruitment rules, 10% vacancies are reserved for promotion from amongst the Record Keeper/GradeIV employees. The selection is to be made on the basis of seniority cum merit, subject to qualifying in the

typing test conducted by the Govt. The particular typing speed test was undergone by the petitioner and she successfully competed the same and secured highest marks. On the basis of such selection, she was appointed to the deputation vacancy of LDC. Although initially she was appointed for one year, but her appointment was extended and she continued to hold the post of LDC till the impugned order was passed. In the meantime, the deputationist Sri Suresh Kumar having been absorbed in the borrowing department, the vacancy remained and it is in this contest, the petitioner has contended that having regard to her selection the authorities ought to have considered her case for regular absorption against the said deputation vacancy.

20. The respondents have shown excuses stating that since the petitioner did not respond to the advertisement dated 15.01.08, there was no occasion to consider her case for regular selection. As noted above, the advertisement was for two posts and it is the specific case of the petitioner that on 15.01.08 when the advertisement was issued, the vacancy occurred on absorption of Sri Suresh Kumar was not available. Further plea of the respondents is that since more vacancies had occurred after issuance of the advertisement, the selection committee recommended altogether 14 candidates out of whom 7 were included in the main list and 7 in the waiting list

21. It is on record that apart from appointing the 7 candidates from the main list, the respondent have also appointed two more candidates including the respondent No. 4 from the waiting list. By now law is well settled that the authorities are to fill up only the advertised vacancies and not the vacancies which occurred after the advertisement. This is based on the sound principle that subsequent vacancies should not be filled up inasmuch as if the same is not adhered to, other eligible candidates will be deprived of participation in the selection leading to violation of Article 14 and 16 of the Constitution. It can legitimately be contended by the petitioner that since the vacancy being held by her was not advertised, she did not offer her candidature against the said advertisement dated 15.01.08. If the authorities decided to fill up subsequent vacancies, they ought to have issued further notification in continuation of the advertisement notifying the same in which event their would have been offering of candidatures by eligible candidates which might have included the petitioner as well.

22. The respondents having not advertised the aforesaid subsequent posts, but appointing the selectees even to the extent of making appointment from the waiting list cannot take the plea that the petitioner having not offered her candidature against the advertisement dated 15.01.08, she is precluded from making a grievance against the appointment of the said candidates in excess of the advertised posts which were two. As pointed out above, if it was the intention of the respondents to fill up the further vacancies, they ought to have notified the same by way of corrigendum and/or further notification in continuation of the advertisement dated 15.01.08. They having not done so, cannot be allowed to

take the plea that the petitioner being not a candidate against the said advertisement and subsequent vacancies, is not entitled to raise any grievance.

23. The recruitment rules have been noticed above, as per which 10% post of LDC is to be filled up by promotion from amongst the Record Keeper/Grade IV employees on the basis of seniority cum merit, subject to qualifying the typing test conducted by the Govt. The respondents have not contended that the petitioner is not senior enough to compete in such selection. The respondents also have not contended that the petitioner has not qualified in the typing speed test. Although the particular selection in which the petitioner had appeared alongwith 15 other candidates was for a deputation vacancy, but the authorities conducted the same following the recruitment rules and the petitioner was selected. Upon such selection, she was appointed against the deputation vacancy. Since the incumbent did not return, her service was extended and in the process she completed couple of years of service in the post of LDC.

24. In the meantime, the deputationist, Sri Suresh Kumar, having been absorbed in the borrowing department, it was legitimate expectation of the petitioner that the authorities would consider her case for permanent absorption and/or regularisation of her service as LDC. However, same was not done and instead the authorities made excess appointments as against two advertised posts. As per own showing of the respondents, they have appointed altogether 9 (nine) candidates even to the extent of appointing two candidates from the waiting list. While doing so, the petitioner was not afforded with any opportunity to offer her candidature against subsequent vacancies. The respondent No. 4 was a wait listed candidate at serial No. 2. However, she has been appointed to the post of LDC earlier being held by the petitioner and in the process the petitioner has been deprived of continuation of her service in the post of LDC.

25. Ms. G. Deka, learned State counsel has produced the records and I have gone through the same. On perusal of the said records, it appears that the proposal was made for advertising two posts of LDC. However, the select list was prepared for altogether 14 candidates out of which 7 (seven) are in the main list and 7 (seven) in the waiting list. As regards the particular plea in the counter affidavit that 9 (nine) candidates had to be appointed in view of the subsequent vacancies, the records have revealed that no conscious decision was taken for filling up subsequent vacancies. Be that as it may, subsequent vacancies have not been advertised which would have entitled the eligible candidates including the petitioner to offer candidatures, the plea of the respondents that the petitioner having not offered her candidature, cannot make any grievance against nonconsideration of her case, is not sustainable in law.

26. The next question which falls for consideration is as to what relief can be granted to the petitioner. The excess appointees except the respondent No. 4 are not party in this proceeding. However, the specific plea of the petitioner is that the respondent No. 4 was appointed against the post held by her, i.e. the deputation vacancy of Shri Suresh Kumar. Her further case is that since the said

post was not advertised, and admittedly so, the respondent No. 4 could not have been appointed against the said vacancy. In respect of the prayer for setting aside the appointment of the respondent No. 4 on that count, I am of the considered opinion that ends of justice would be met, if a direction is issued for consideration of the case of the petitioner as well as on the strength of her selection for the deputation vacancy of LDC. Since the said selection was conducted as per recruitment rules, and the petitioner came out successfully and the deputationist has been absorbed in the borrowing department, the authority before dispensing with the services of the petitioner ought to have considered her case for permanent absorption against the said post. They having not done so, the respondents are directed to carry out the said exercise to accommodate the petitioner. The impugned order dated 06.07.09 (Annexure5) is set aside so far as the same relates to the petitioner.

27. It is further provided that upon consideration of the case of the petitioner in the above manner and in the event of her absorption in any vacant post of LDC, she will not be entitled to get any backwages but her continuity in service will be maintained for all other purposes. Entire exercise shall be carried out as expeditiously as possible, preferably within 30.06.2010.

28. With the above direction, the writ petition is disposed of, without however, any order as to costs.