
(2010) 01 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (C) No. 388 (AP) of 2009

Miss Yapi Dolum and Others

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2010) 2 GLD 712 : (2010) 2 GLT 541

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : S. Sonar, L. Tapa and V. Pradhan, for the Appellant; G. Deka, Addl. Sr. G.A. on behalf of R.H. Nabam, Sr. GA, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. R. Sonar, learned Counsel for the petitioners. None appears for the respondent No. 1, i.e. Arunachal Pradesh Legislative Assembly represented by its Secretary. A prayer has been made by Ms. G. Deka, learned Addl. Sr. Govt. Advocate for adjournment of this case as Mr. R.H. Nabam, learned Senior Govt. Advocate, who is representing the respondent No. 1 could not appear due to his personal difficulties.

2. Notice of motion was issued as far back as on 9.9.2009 with an interim order to the effect that the impugned order dated 27.8.2009 shall remain suspended till returnable date. No return has been filed by the respondent No. 1. No counter-affidavit has been filed by the respondent No. 2 also.

3. The petitioner Nos. 1 and 2 were appointed/engaged as unskilled typist in the Legislative Assembly Secretariat, Arunachal Pradesh, Naharlagun on a fixed wages of Rs. 1068/- per month in 1999 and 2001. Similarly, the petitioner Nos. 3 to 5 were also engaged/appointed as unskilled contingent staff. All the petitioners were working as typists. Subsequently, the respondent No. 2 was also engaged/appointed as contingent staff (as typist on 14.5.2007 on similar terms

and conditions. Thereafter again the respondent No. 2 was appointed temporarily on ad-hoc basis as mali for a period not exceeding 6 (six) months. The present petitioners challenged the aforesaid appointment of respondent No. 2 by filing WP(C) 339 (AP) 2009 wherein, an interim order was passed on 25.8.2009 at the motion stage suspending the aforesaid appointment order. The petitioners' counsel informed the respondent authority by sending a letter dated 27.8.2009 along with a copy of the said order. Without responding to the said letter, the respondent authority appointed the private respondent No. 2 temporarily as LDC on officiating basis subject to regularisation by the DPC.

4. Mr. Sonar, learned Counsel for the petitioners submits that the impugned order dated 27.8.2009 appointing the respondent No. 2 has been made circumventing the order dated 25.8.2009 passed by this Court. It is on record that the appointment of present respondent No. 2 as mali on adhoc basis for a period not exceeding six months is under challenge in the aforesaid writ petition, namely, WP(C) 339 (AP) 2009. The period of six months from the date of appointment on 10.8.2009 would expire on 10.2.2010. But before expiry of the said period, the respondent No. 1 has appointed the respondent No. 2 on officiating basis as LDC on the same day when this Court passed the interim order suspending the adhoc appointment of respondent No. 2 as mali.

5. No reason has been assigned by the respondent No. 1 or at least it does not appear from the impugned appointment letter dated 27.8.2009 as to under what circumstances such appointment had to be made without resorting to regular recruitment process and that too, without considering the cases of other similarly situated persons like the petitioners who were engaged as contingent staff much before the engagement of respondent No. 2. In the impugned appointment order dated 27.8.2009, it is not mentioned whether the appointment of respondent No. 2 has been made on adhoc basis although it is mentioned that the appointment is subjected to regularisation by the DPC.

6. For want of response from the respondent No. 1, this Court is not in a position to know whether arrangement is being made for holding the DPC but the conduct of the respondent No. 1 is not filing counter-affidavit after obtaining the interim order shows that no process is initiated to hold the DPC within a reasonable period of time, which smacks of red tapism making the deserving candidates suffer. The failure to hold the DPC is to be treated as a serious administrative lapse inasmuch as the candidates are made to suffer for no fault on their parts. The Apex Court has already come down heavily and decried the failure of the authorities in holding the DPC in P.N. Premachandran Vs. The State of Kerala and Others, . When an appointment is made without following the established procedure the same cannot be allowed to continue for an indefinite period of time. Such appointment should always be for a short period only and the appointing authority is duty bound to hold the interview for selection of suitable candidates.

7. The Arunachal Pradesh Legislative Assembly Group "C" (Non-Gazetted)

Recruitment Rules, 1986 for Lower Division Clerk (LDC) were framed under the proviso to Article 309 of the Constitution of India which provides, amongst other, 90% for direct recruitment and 10% by promotion from among the Record Keeper and matriculate Group "D" employees of L.A. Secretariat. According to the aforesaid Rules, the recruitment should be made on the basis of merit adjudged through a written test followed by viva voce. It is apparently clear that the respondent No. 1 has failed to follow the aforesaid Rules in the matter of appointment of LDC and the respondent No. 2 has been appointed in violation of the said Rules.

8. Mr. Tarak, learned Counsel for the respondent No. 2 fairly submits that the appointment of respondent No. 2 has been made without following the recruitment rules. However, he made a prayer that the respondent No. 2 may be allowed to continue to serve as LDC till regular appointment is made after concluding the recruit-merit test.

9. Considering the above facts and circumstances and the submissions made by the learned Counsel of the parties, I hold that the impugned appointment order dated 27.8.2009 is illegal and in violation of the Recruitment Rules of 1986 mentioned above and the same cannot be allowed to sustain. Accordingly, the impugned order dated 27.8.2009 is set aside.

10. However, the respondent No. 2 shall be allowed to work as LDC till regular appointment is made by resorting to recruitment process as per the Recruitment Rules of 1986 within a period of 4 months from today whichever is earlier. Be it also provided that the petitioners shall also be allowed to work as contingent typists until further order.

11. With the above observations and directions, this writ petition stands disposed of.