
(2011) 02 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (Civil) No.97 (AP) of 2010

Nehru Lochung

APPELLANT

Vs

State of Arunachal Pradesh & Ors.

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2011) 5 GLT 368

Hon'ble Judges : B.D.Agarwal, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioner: Mr. P. Taffo, Ms. N. Dangeng & Mr. T. Gyadi, Advocates appeared for the Respondents: Ms. M. Tang, GA & Mr. D. Boje, Advocates appearing for Parties

Judgement

B.D. Agarwal, J.—This writ application under Article 226 of the Constitution of India, has been filed praying for a writ in the nature of certiorari so as to set aside the Orders dated 17.8.2009 and 19.8.2009, passed by the Superintending Engineer (Coord), APEC1, Naharlagun, whereby the said authority has appointed respondent Nos. 4, 5, 6 and 7 as Khalasis.

At the same time, the petitioner is also praying for directing the respondents to consider his appointment to a suitable post as workcharged employee, adhering to the seniority list of casual staff.

2. Heard Mr. T. Gyadi, learned counsel for the writ petitioner as well as Ms M. Tang, learned Government Advocate for the respondent Nos. 1, 2 and 3. The private, respondents were represented by Mr. D. Boje, learned counsel. I have also perused the pleadings of both the parties.

3. During the course of hearing, the learned Government Advocate also produced one file containing few applications and orders of appointments. The file does not contain any order sheet so as to justify the merit of the private respondents for their appointments.

4. In the affidavit of respondent Nos. 1,2 and 3, it has been stated that the Superintending Engineer has the discretion to appoint workcharged employees directly or he can also choose from enrolled casual labourers as per the necessity. Along with the writ petition and the affidavit of the private respondents, a series of Tradewise Seniority List of casual staff for the year 2008, have been annexed. Mr. Boje, learned counsel for the private respondents submitted that the writ petitioner is in the list of Linemen, whereas, the respondents have been appointed as Khalasis. In other words, it was the submission of the learned counsel for the private respondents that the appointing authority was not obliged to take into consideration the seniority position of the writ petitioner since he is in a different trade.

5. At the same time, the Seniority Lists also do not show that the respondents have better claims over the writ petitioner. To consider the rival claims and also to examine whether the State respondents had actually picked up respondent Nos. 4 to 7 de hors to the seniority and in violation of the procedure of giving public employment it would be just and proper to reproduce the standing of the writ petitioner and the private respondents in their respective trades in the following chart:

SI. No Name of the Petitioner/Respondent Trade Date of appointment as Casual Labourer Educational qualification Appointed as

1. Sri Nehru Lochung Lineman/Helps 22.06.1998 ClassIX
2. Smt. Pasang Drema Khumo (Respondent No.4) Bill. Asstl 12.08,1998 ClassV Khalasi (Peon)
3. Smt. Nabam Yarup (Respondent No. 5) TelephoneAttendant 29.12.1998 ClassVII Khalasi (M/R)
4. Smt. Nabam Rija (Respondent No. 6) Peon 06.05.1999 ClassVIII Khalasi (Peon)
5. Smt. Jumdik Potom (Respondent No. 7) Peon 10.05.1999 ClassX Khalasi (M/R)

6. As per the above chart the writ petitioner was senior to the respondents at the time of their initial appointments as casual labourers. Besides this, from the documents annexed with the writ petition and the counter affidavits it is gathered that Power department is maintaining separate Seniority Lists for Peons, Linemen, Electricians, Helps, MeterReaders, TelephoneAttendants, Chowkidars and so on. In the said List, the names of respondent Nos. 6 and 7 stand at Serial Nos. 27 and 28 respectively in the list of Peons. However, the affidavit of the respondents is silent to clarify whether all the 26 (twentysix) Peons, senior to the respondent Nos. 6 and 7 have been appointed.

6.1. Name of respondent No. 5 is in the list of Telephone Attenders and not in the list of Helps or Peons. However, instead of appointing any casual labourer from the List of Helps and Peons the respondents have picked up the respondent No. 5

to appoint her as Khalasi (M/R). I would also like to add here that in the list of MeterReaders there are 88 casual labourers and some of them are also possessing ITI Diplomas and Higher Secondary Education qualification. Strangely, all these persons have been ignored for appointment as MeterReaders in preference to respondent Nos. 5 and 7.

6.2. There is another Seniority List of casual staff for Linemen, which also includes Helps. Ordinarily, Helps can also be appointed as Peons. However, instead of appointing any person from the list of Helps, the State respondents have appointed respondent Nos. 4 and 6 as Khalasi (Peons). Before her appointment as Peon, the respondent No. 4, Smt. P. Drema Khemu, was working as Bill Assistant and she stood at Serial No. 4 in the Seniority List. I do not find any justification how the said woman has been appointed as Peon, overlooking the seniority of Helps, Peons and other Bill Assistants. It is true that respondent Nos. 6 and 7 were engaged as Peons on casual basis but their seniority positions were 27 and 28 respectively. The affidavit of the State respondents has not made it clear whether all the Peons, senior to respondent Nos. 6 and 7 have been regularly appointed. Be that as it may, in the said Seniority List, the writ petitioner's name stands at Serial No. 149 and he was initially appointed as Helps but the petitioner was, in due course, engaged as a Lineman. If that is so, there should have been no difficulty to appoint the writ petitioner either as Peon or MetreReader. In this way, the State respondents have not only ignored the educational qualification as well as the seniority, but they have also picked up the private respondents at random without any justification.

7. In their affidavit, the respondent Nos. 1,2 and 3 have taken a plea that the private respondents were appointed under the discretionary quota of direct appointment. It is true that under Regulatory Scheme, issued from the Office of Chief Engineer (T & D), Department of Power, the Officers can fill up vacancies in casual roll and make adhoc promotions and appointments. However, there is no indication that this scheme has the approval of the Government. Besides this, there are no guidelines of adhoc promotions and appointments as well as number of persons that can be appointed by the Officers in the Power Department.

8. In the case of Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors., reported in (2006) 4 SCC 1, the Hon'ble Supreme Court has made it clear that any temporary, contractual, casual, daily wage or adhoc employees have no indefeasible rights to be absorbed or regularized or to be made permanent. In other words, the Apex Court has held that all public employments should be made in a transparent manner otherwise it will infringe the constitutional guarantee enshrined under Articles 14 and 16 of the Constitution of India. The relevant observations of the Hon'ble Supreme Court are reproduced below:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 34 or in ordering the overlooking of the need to

comply with the requirements of Article 14 read with Article 16 of the Constitution....."

9. The aforesaid view has been thoroughly approved by the Apex Court in the case of *State of Bihar Vs. Upendra Singh*; (2009) 5 SCC 65. In this case, Their Lordships were examining termination of service of the respondent, who was appointed without following minimum rules of public employment. Adverting to the ills of "Spoils System" of America, Their Lordships have observed that the framers of the Constitution had rightly considered the efficacy of introducing Article 309 in the Constitution to regulate public employment. Relevant observations are extracted below:

"38. With a view to insulate the public employment apparatus in independent India from the virus of spoils system, the framers of the Constitution not only made equal opportunity in the matter of public employment as an integral part of the fundamental rights guaranteed to every citizen but also enacted a separate part i.e. Part XIV with the title "Services under the Union and the States". Article 309 which finds place in Chapter 1 of this part envisages enactment of laws by Parliament and the State Legislatures for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Proviso to this article empowers the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and the Governor of a State or such person as he may direct in the case of services and post in connection with the affairs of State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts till the enactment of law by the appropriate legislature."

10. While approving the termination order the Hon'ble Supreme Court reiterated the necessity and importance of advertisement of vacancies through public media, in addition to calling names from concerned Employment Exchange, followed by a selection process. There are many other judicial pronouncements, wherein the practice of giving appointments in Government departments, without wide publication of the vacancies has been deprecated, as it offends Articles 14 and 16 of the Constitution of India. Equally, adopting the practice of pick and choose in public employment and giving jobs through backdoor has also been condemned.

11. In the case before me, the pleaded case of the State respondents is that the respondent Nos. 4, 5, 6 and 7 have been appointed under direct recruitment quota. If that was so, the respondents were incumbent to publish the vacancies so that eligible candidates could have opted for the job. However, neither the vacancies were advertised nor any sort of selection process was adopted. In this way, the appointments of respondent Nos. 4 to 7 neither fulfil the conditions of absorption laid down in the case of *Uma Devi* (supra) nor stands the judicial test of direct appointments due to inherent lack of transparency and fairness in the appointment of private respondents.

12. For the reasons stated above, the writ petition stands allowed. The impugned orders are hereby set aside. As a corollary, the appointments of respondent Nos. 4,5,6 and 7, are hereby set aside. However, I refrain from giving any direction to the respondents to consider the appointment of the writ petitioner at this stage, since his case will be considered as and when there is vacancy and on the basis of seniority and merit.

13. The Registry is directed to forward a copy of this Judgment to the Chief Secretary, Government of Arunachal Pradesh, for information. It is advisable that the Government reexamines the Regulatory Scheme prepared by the Chief Engineer (T&D), Department of Power, so that the element of arbitrariness in appointments is eliminated.

14. Although it was a fit case to award exemplary costs against respondent Nos. 1, 2 and 3 for appointing private respondents without any semblance of transparency and adopting any selection procedure, I refrain from imposing any cost since the writ petitioner also could not make out a case of mandamus for his appointment.