

GAHC040004142020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/141/2020

Miss Churu Lowang

D/o Shri Senwang Lowang,
R/o Bera Village, P.O. Khonsa
Dist. Tirap, Arunachal Pradesh,
Presently residing in All India Radio Station
Colony, 'C' Sector, Itanagar, P.O. Itanagar,
Dist. Papum Pare.

.....**Petitioner**

VERSUS

- 1. The State of Arunachal Pradesh**
Represented through the Chief Secretary,
Govt. of A.P., Civil Secretariat, Itanagar,
P.O. Itanagar
- 2. The Director of Secondary Education,**
Govt. of Arunachal Pradesh, Itanagar, P.O. Itanagar
- 3. The Director of Elementary Education,**
Govt. of Arunachal Pradesh, Itanagar, P.O. Itanagar
- 4. The Deputy Director of School Education,**
Govt. of Arunachal Pradesh, Khonsa, Dist. Tirap,
Arunachal Pradesh
- 5. Shri Publi Lombi, Principal,**
Govt. Higher Secondary School, Deomali,
P.O. Khonsa, Dist Tirap, Arunachal Pradesh

6. The Public Information Officer (PIO)

Office of the Directorate of Elementary Education

Govt. of Arunachal Pradesh, Itanagar, P.O. Itanagar, Arunachal Pradesh

7. Shri Jummin Ete, C/o Principal,

Govt. Higher Secondary School, Deomali,

P.O. Khonsa, Dist. Tirap, Arunachal Pradesh.

.....**Respondents**

**BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR**

For the petitioner : Mr. T. Son, Advocate

For the respondents : Mr. I. Riram, Addl. Sr. GA
Mr. T. Jamoh, SC, Education
Mr. D. Kamduk, Advocate

Date of hearing : 09.10.2023

Date of Judgment/Order : 12.10.2023

JUDGMENT & ORDER

12.10.2023

Heard Mr. T. Son, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Addl. Sr. Government Advocate, Arunachal Pradesh, representing the respondent No.1 as well as Mr. T. Jamoh, learned Standing Counsel, Education Department, representing the respondent Nos. 2, 3 4 and 6. Mr. D. Kamduk, learned counsel appears for the respondent No. 7.

2. This writ petition is directed against the impugned order No.ED.2/DSE/419/APT/2017, dated 07.01.2019, under the seal and signature of the Director of Secondary Education, Govt. of Arunachal Pradesh, Itanagar (respondent No. 2 herein), appointing the private respondent No. 7 directly to

the post of Upper Division Clerk (for short 'UDC') on compassionate ground against the vacancy of one R.K. Gupta, Retired UDC, without following the due procedures of the Govt. of India guidelines/instructions on compassionate appointment vide Office Memorandum No. F.No.14014/02/ 2012-Estt.(D), Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), North Block, New Delhi, dated 16.01.2013 as well as the guidelines/instructions issued by the Govt. of Arunachal Pradesh by adopting a back door policy of deluding the official procedures established in the Guidelines and Instructions under the scheme for compassionate appointment at the time of "die-in-harness".

3. The grievance of the petitioner, in brief, is that she was appointed to the post of UDC on contractual basis initially for a period of 1(one) year in the pay matrix Rs.29,200/-, Level-5, Cell-1 in the Office of the Deputy Director of School Education, Tirap District, Khonsa (respondent No. 4 herein) vide Order No.EED/2/234/2012, dated 20.07.2017 issued under the seal and signature of the Director of Elementary Education, Govt. of Arunachal Pradesh, Itanagar (respondent No.3 herein) against the vacancy which arose after the retirement of one R.K. Gupta, UDC.

4. Pursuant to the aforesaid appointment order, the petitioner joined her duty on 31.07.2017 in the office of the respondent No. 4 and she was assigned charter of duty for allotment of staff quarter, Medical Reimbursement (M.R.), vacation, issue of circular, wages bill and DDSE tour programme etc. vide order No. EDN/KSA/CD/2009-10, dated 30.10.2017. On completion of one year service rendered by the petitioner, the Respondent No.3 vide order No. EED.2/234/2012/272, dated 11.07.2018, was pleased to grant further period of 6(six)

months w.e.f. 01.08.2018 to 30.01.2019 along with charter of duties vide order No. EDN/KSA/CD/09-10, dated 11.09.2018 by considering her satisfactory performance during the contractual period. After completion of the one year period the petitioner approached the respondent No. 3 and requested for regularization of her service as there were similarly situated cases where persons were already regularized by the respondent authorities without conducting any formal interview. On request, the respondent No. 3 was pleased to put up the file for process for consideration of the petitioner's case sympathetically as well as on satisfactory performance on the part of petitioner during the contractual period.

5. Again, vide order No. EED.2/234/2012, dated 25.01.2019, issued by the respondent No. 3, further extended the contractual period for another 6 (six) months w.e.f. 31.01.2019 to 31.07.2019, with the same terms and conditions as mentioned in the initial appointment order. In pursuance of the aforesaid order the petitioner was continuing in her service with utmost sincerity and devotion to her duties with a hope and trust that the Respondent No. 3 would regularize her service. But, unfortunately, the respondent No. 2 vide the impugned order No. ED.2/DSE/419/APT/2017, dated 07.01.2019, appointed the private respondent No. 7 temporarily as UDC on compassionate ground with pay matrix Level-5, Cell-5 of Rs. 29,200/- per month plus other allowances as admissible under rules from time to time with effect from the date he actually reports for duties to the Principal, Govt. H.S. School, Deomali, Tirap District, Arunachal Pradesh.

6. The aforesaid impugned order came like a bolt from the blue to the petitioner as the respondent Nos. 2, 3 & 4 suddenly and directly verbally

through the dealing assistant of the office of the DDSE asked the petitioner not to come to the office as ordered by the respondent Nos. 2, 3 & 4 without any show cause notice as stipulated in the terms and condition No.1(a) of the initial appointment order, dated 20.07.2017 issued by the respondent No.3 in violation of Section 5 of the Central Civil Services (Temporary Services) Rules 1965. Being highly aggrieved and dissatisfied with the aforesaid impugned order of appointment of the private respondent No.7 the petitioner has filed the instant writ petition praying for reliefs.

7. A perusal of the record reveals that the petitioner was appointed as Upper Division Clerk (UDC) on contractual basis for a period of one year under the respondent No.4, Khonsa by the respondent No.3/Directorate of Elementary Education, Govt. of Arunachal Pradesh on 20.07.2017, subject to the condition, *inter alia*, that the appointment was purely temporary etc., with the approval of the Government vide Annexure-2. Accordingly, the petitioner reposted her joining on 31.07.2017 to the DDSE, Khonsa vide Annexure-3. The petitioner's service was extended for a further period of 06(six) months w.e.f. 01.08.2018 to 30.01.2019 and again extended for a period of 06(six) months w.e.f. 30.01.2019 to 31.07.2019 vide Annexure-4(series) by the respondent No.3/The Director of Elementary Education, Government of Arunachal Pradesh subject to same conditions of appointment as initially made. An undated experience and performance certificate vide Annexure-4(series) issued purportedly by the respondent No.4/Deputy Director of School Education (DDSE), Khonsa shows that the petitioner was so appointed as UDC against one R.K Gupta, UDC (since retired) and she had experience of more than 18 (eighteen) months in official work. Subsequent thereto, however, the respondent No.2/The Director of Secondary Education, Government of Arunachal Pradesh, during the subsistence

of the aforesaid extension period, issued an order, dated 07.01.2019, appointing the respondent No.7 as U.D.A. on compassionate ground against the vacancy created on retirement of R.K. Gupta by the respondent No.2/ the Director of Secondary Education, Government of Arunachal Pradesh. The documents show that the said R.K. Gupta joined in service as U.D.A. on 03.01.2004 (F/N) after transfer from Govt. H.S. School, Kamba, West Siang District at Govt. H.S. School, Khonsa, Tirap as per an order, dated 09.10.2003, and retired from the post and accordingly, pensionary benefits with effect from 31.03.2015 were given to him.

8. It is pertinent to mention herein that the Department of School Education, Arunachal Pradesh was bifurcated into 02(two) departments namely, (i) Directorate of Elementary Education, and (ii) Directorate of Secondary Education. It is further noticed, as stated above, that the petitioner was appointed as UDC on contractual basis under the Directorate of Elementary Education, whereas the respondent No.7 was appointed as UDC under the Directorate of Secondary Education vide the appointment order dated 07.01.2019, on compassionate ground and accordingly, he had undergone probation period of 02(two) years. Thus, it appears that the contractual service of the petitioner was born and rendered under the Directorate of Elementary Education, Arunachal Pradesh, without any due selection process in law against any vacant sanctioned vacancy, whereas, the service of R.K. Gupta, UDC, was born in the Secondary Education Department on regular basis and retired from the said post on superannuation with all pensionary benefits. Thus, it is noticed that the petitioner's contractual service was apparently being not under the Secondary Education Department, her purported claim of any arbitrary and

illegal appointment of the respondent No.7 on compassionate ground which was done following the scheme for compassionate appointment under Central Government and his appointment was being against the clear sanctioned vacancy that fell due to retirement of said R.K. Gupta and further, when her (petitioner) term of contractual appointment expired without further renewal/extension, is not sustainable in law.

9. The contractual appointment order of the petitioner, dated 20.07.2017, shows, as stated above, that she was appointed by the Director of Elementary Education, Arunachal Pradesh against the sanctioned vacancy of R.K. Gupta (retired), who had served under the Directorate of Secondary Education, Arunachal Pradesh, was *per se* illegal and irregular being out of jurisdiction and that too, when she was appointed in public service without through due selection process and further, as her appointment was not shown anywhere to be on compassionate ground. It may be reiterated that the respondent No. 7, on the other hand, was appointed on compassionate ground following the laid down norms as per Compassionate Appointment Comprehensive View, 2016 and the Govt. of India Order F. No. 14014/02/2012-ESTT(D), dated 16.01.2013 by respondent No. 2 conducted by a Committee and as per the common R/R issued vide Order No. AR-68/2009, dated 06.08.2009 on regular basis with a clause of 02(two) years probation period. Therefore, in the considered opinion of this Court, the ratio of the decisions in the judgment of this Court rendered in *Achyut Ranjan Das & Ors. Vs. State of Assam*, reported in 2006 (4) GLT 674 and *Thingujam Homen Singh Vs. State of Manipur & Ors.*, reported in 2008(3) GLT 529 cited by the petitioner cannot be applied to the case of the present writ petitioner.

10. For the above stated reasons, the petition being devoid of merits, the same stands dismissed.

Accordingly, the writ petition stands disposed of.

JUDGE

Comparing Assistant