

GAHC040009402020



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

Case No. : WP(C) 354/2020

1:Rikbi Taipodia
LDC-CUM-COMPUTER OPERATOR, OFFICE OF THE DIRECTOR, DOTCL,
GOVT. OF AP,CHIMPU, ITANAGAR, PO/PS ITANAGAR, DIST. PAPUM PARE,
AP.

VERSUS

1:The State of AP and 5 Others
REPRESENTED THROUGH THE CHIEF SECRETARY, GOVT. OF AP,
ITANAGAR.

2:THE SECRETARY
DOTCL
GOVT. OF AP
CHIMPU
ITANAGAR.

3:THE DIRECTOR
DOTCL
GOVT. OF AP
CHIMPU
ITANAGAR.

4:THE COMMISSIONER
DEPARTMENT OF PHE AND WATER SUPPLY
GOVT. OF AP
ITANAGAR.

5:THE CHIEF ENGINEER
(WZ-CUM-COORD)

PHE AND WS DEPARTMENT
GOVT. OF AP
ITANAGAR.

6:NGUNKAM LOWANG
LDC
OFFICE OF THE EXECUTIVE ENGINEER
PHE AND WS DIVISION
ITANAGAR
GOVT. OF AP
ITANAGAR

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 23.02.2023

Heard Mr. L. Perme, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Additional Senior Government Advocate representing respondents No. 1 to 5.

Office note dated 28.04.2022, indicates that notice upon respondent No. 6 has been duly served.

The petitioner, who is working as Computer Operator-cum-Lower Division Clerk (LDC) on temporary basis in the Department of Tirap, Changlang, Longding Affairs (DoTCL, for short), Government of Arunachal Pradesh, by filing this writ petition under Article 226 of the Constitution of India, has assailed the legality of the order dated 09.09.2019, issued by the Chief

Engineer (WZ-cum-Coord), PHE & WS Department Government of Arunachal Pradesh, vide No. PHED-II/CE/Coord/20/19/599-605, whereby the respondent No. 6, LDC, Department of Tirap, Changlang, Longding Affairs (DoTCL), Itanagar, has been appointed as LDC in pay at Rs. 25,500/- at Level-4 in the pay matrix per month plus other allowances, in the Department of Public Health Engineering & Water Supply, Government of Arunachal Pradesh by transfer on deputation.

The case of the petitioner is that the respondent No. 6 was an illegal appointee in the DoTCL, Government of Arunachal Pradesh as an LDC. When the appointment of the respondent No. 6 in the DoTCL was put to a challenge by the writ petitioner in WA 46(AP)/2017, the Division Bench of this Court, vide judgment and order dated 07.03.2019 had set aside the appointment of the respondent No. 6 as LDC in the DoTCL on the ground that the appointment of the respondent No. 6 in the DoTCL was made in violation of the Recruitment Rules as well as contrary to the constitutional provisions. The order dated 07.03.2019 passed by this Court in WA 46(AP)/2017 was not put to challenge either by the respondent No. 6 or by the State respondents and accordingly, according to the petitioner, the judgment and order dated 07.03.2019 passed in WA 46(AP)/2017 has attained finality.

The petitioner, therefore, contends that since the respondent No. 6 was already out of service from the post of LDC in the DoTCL by virtue of the judgment and order dated 07.03.2019 passed in WA 46(AP)/2017, the respondent No. 6 could not have been appointed as LDC in the Department of Public Health Engineering & Water Supply, Government of Arunachal

Pradesh, by transfer on deputation, taking the respondent No. 6 to be still in service in the DoTCL as LDC, whereas, the service of the respondent No. 6 as LDC in the DoTCL had already come to an end by virtue of the judgment and order dated 07.03.2019 passed WA 46(AP)/2017.

The above contention has been made by the petitioner in **Paragraph-13** of the present writ petition, which is, reproduced herein below:-

“13. That the petitioner begs to submit that the initial appointment of the Private respondent No. 6 was set aside and quashed by the Division Bench of Hon'ble High Court on the ground that the said appointment was illegal without following the due process as prescribed under Recruitment Rule, than how the respondent authority made subsequent appointment in favor of private respondent No. 6 on deputation to Department of Public Health Engineering & Water Supply, Government of Arunachal Pradesh, as such the appointment on deputation vide Order dated 04.10.2019 is illegal, arbitrary and liable to be set aside and quashed.”

Contesting the case set up by the petitioner, respondents No. 2 & 3 and respondents No. 4 & 5 have filed their counter-affidavits. Respondents No. 2 & 3 are the Department of DoTCL and respondents No. 4 & 5 are the Department of Public Health Engineering & Water Supply.

In the counter-affidavits filed by the respondents No. 2 & 3, to the contention raised by the petitioner in **Paragraph-13** of the writ petition, it has been answered in **Paragraph-14** of the counter-affidavit as under, which is reproduced herein below:-

*“14. That with regards to the statement made in **Paragraph-13** of the writ petition, the answering respondent begs to state that the appointment of the Private respondent No. 6 was set aside and quashed accordingly as*

per the Hon'ble Court judgment and order."

In the counter-affidavit filed by the respondents No. 4 & 5, the response to the averments made by the writ petitioner in **Paragraph-13** of the writ petition has been answered in **Paragraph-9** of the counter-affidavit filed by the respondents No. 4 & 5, which is as under:-

*"9. That with regards to the statement made in **Paragraph-13** of the writ petition, the answering respondent begs to state the private respondent No. 6 has been appointed by transfer in deputation on receipt of "No Objection Certificate" (NOC) issued by the Secretary, DoTCL."*

On perusal of the rival contentions made, it has been noticed that in **Paragraph-13** of the writ petition, the petitioner has made a categorical statement that the appointment of respondent No. 6 as LDC in the DoTCL was set aside and quashed by the order passed by this Court in WA 46(AP)/2017 dated 07.03.2019 and accordingly, the respondent No. 6 could not have been appointed as LDC in the Department of Public Health Engineering & Water Supply, on deputation, vide the impugned order dated 09.09.2019, as the appointment of the respondent No. 6 as LDC in the DoTCL had already been set aside and quashed by the judgment and order dated 07.03.2019 passed by this Court in WA 46(AP)/2017.

To the above contention of the petitioner, neither, the respondents No. 2 & 3, nor, the respondents No. 4 & 5 in the counter-affidavits filed, have controverted the contentions of the petitioner made in Paragraph-13 of the writ petition.

Thus, it is a matter of record that the respondent No. 6 was no longer an

employee of the DoTCL as LDC, on and from 07.03.2019 and accordingly, one, who is not in service in any of the department could not have been appointed to any other department, on deputation, as is sought to be done in the instant case vide the impugned appointment dated 09.09.2019, issued on 04.10.2019 by the Chief Engineer (WZ-cum-Coord), PHE & WS Department Government of Arunachal Pradesh, inasmuch as any appointment made by transfer on deputation pre-supposes that such an appointee is in service, serving in some other department.

In view of the above, the impugned order of appointment dated 09.09.2019, issued on 04.10.2019 by the Chief Engineer (WZ-cum-Coord), PHE & WS Department Government of Arunachal Pradesh, vide Memo No. PHED- II/CE/Coord/20/19/ 599-605, whereby the respondent no. 6 has been appointed as LDC by transfer on deputation in the Department of Public Health Engineering & Water Supply cannot be sustained in law and the same accordingly stands set aside and quashed.

The writ petition is disposed of with above direction.

JUDGE

Comparing Assistant