



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

Case No. : WP(C)/350/2021

Tanyang Sai Skilled Contingent Typist, DRDA Ziro, P.O/P.S Ziro, Lower Subansiri District, Arunachal Pradesh

VERSUS

The Union of India and 6 Ors. Represented by the Secretary, (DRDA Admin), Govt. of India, Ministry of Rural Development, KrishiBhavan, New Delhi.

2:THE STATE OF AP

Age: 0

Occupation : Represented by Chief Secretary Govt. of Arunachal Pradesh Itanagar

3:The Secretary

Age: 0 Occupation : Rural Development Department Govt. of Arunachal Pradesh Itanagar

4:The Director

Age: 0

Occupation : Rural Development Department Govt. of Arunachal Pradesh Itanagar

5:The Deputy Commissioner cum CEO

Age: 0

Occupation : District Rural Development (DRDA). District Lower Subansiri Ziro Arunachal Pradesh

6:The Project Director

Age: 0

Occupation : District Rural Development Agency (DRDA). District Lower Subansiri Ziro Arunachal Pradesh

7:Momar Bomjen

Age: 0

Occupation : Technical Assistant (MIS) MG NREGA Cell DRDA Ziro District Lower

Subansiri Arunachal Pradesh

Advocate for the Petitioner : Duyu Laji, Tapi Omo, Rei Tapa

Advocate for the Respondent : S K Deori, Dicky Panging, Marto Kato, Karyom Dabi, Binter Picha, D Tamuk, Doge Lona, Kirmar Ado, DSGI, GA (AP), SC (RWD), Marge D, T Tayeng, Somila

B E F O R E

HON'BLE MR. JUSTICE NANI TAGIA

Date of judgment & order : 02.08.2023

JUDGMENT & ORDER (Oral)

Heard Mr. T. Omo, learned counsel for the petitioner. Also heard Mr. N. Sora, learned counsel for the respondent no. 1; Mr. I. Riram, learned Additional Senior Government Advocate for the respondent no. 2; Mr. B. Picha, learned Standing counsel for the Rural Development Department, representing the respondents no. 3, 4, 5 & 6 and Mr. S. K. Deori, learned counsel for the respondent no. 7.

2. This writ petition is directed against the order, dated 1st September, 2021, issued by the Deputy Commissioner-cum-CEO, District Rural Development Agency, Lower Subansiri District, Ziro, vide Memo No. DRDA/ESTT/2000/1141-44, whereby, the respondent no. 7 has been appointed as Lower Division Clerk (LDC).

3. The facts leading to filing of the present writ petition, briefly stated, are as follows:

The petitioner was appointed as Skilled Contingent Typist by order dated 28th July 2009, issued by the Deputy Commissioner-cum-CEO, District Rural

Development Agency, Lower Subansiri District, Ziro, vide Memo No. DRDA/ESTD-27/94, for a period of 6 (six) months, w.e.f. date of her joining. The service of the petitioner as such was extended thereafter, from time to time and the petitioner is still continuing as such in the Department. The respondent no. 7 on the other hand was appointed on 24.11.2016 as Technical Assistant (MIS) on contract basis for a period of one year from the date of joining, vide order dated 24th November 2016, issued by the Deputy Commissioner-cum-DPC, District Rural Development Agency, Lower Subansiri District, Ziro, vide Memo No. DRDA/ESTT/MGNREGA/15/2015-16 and the respondent no. 7 is also stated to be continuing as such in the Department.

The petitioner, therefore, contends that, the petitioner being senior to the respondent no. 7 in the Department, the petitioner should have been appointed as LDC in place of the respondent no. 7. Since, the respondent no. 7 has been appointed as LDC superseding the seniority position of the petitioner in the Department vis-à-vis the respondent no. 7, the petitioner, has filed this writ petition for setting aside of the impugned order of appointment dated 1st September, 2021, issued by the Deputy Commissioner-cum-CEO, District Rural Development Agency, Lower Subansiri District, Ziro, vide Memo No. DRDA/ESTT/2000/1141-44, whereby, the respondent no. 7 has been appointed as LDC and with another prayer that the petitioner, should also be regularised as LDC from the date, the respondent no. 7 was appointed as LDC by the appointment order, dated 1st September, 2021.

4. The respondents no. 3, 4, 5 & 6 have filed the counter-affidavit, wherein,

it has been stated that the petitioner has no right to be appointed as LDC from the post of Skilled Contingent Typist. Appointment to the post of LDC on temporary basis from either Skilled Contingent Staff, which the petitioner is, or Technical Assistant (MIS), which the respondent no. 7 is, is made in the wisdom of the employer. It has been further stated that the seniority is not the only criteria, but it is the employer, who has to decide which of the employee is suitable for the post on temporary basis. It has been further stated that both the petitioner as well as the respondent no. 7 had applied for the post of LDC and on consideration of the applications submitted by both the petitioner as well as respondent no. 7, the respondent no. 7 has been appointed on being found to be more efficient, suitable and productive.

5. The respondent no. 7 in the counter-affidavit filed, has submitted that as one post of LDC was lying vacant, the respondent no. 7 had applied for the said post and as he was found to be qualified for appointment in the post of LDC, the respondent authorities have appointed the respondent no. 7 as LDC.

6. Though the pleaded case of the petitioner in the writ petition is for setting aside of the impugned order of appointment of the respondent no. 7 as LDC, on the ground that the appointment of the respondent no. 7 as LDC in the Department has been made ignoring the seniority position of the petitioner vis-à-vis the respondent no. 7, Mr. T. Omo, learned counsel for the petitioner has submitted that the appointment of the respondent no. 7 as LDC was made in violation of OM, dated 20th May, 2003, issued by the Secretary (RD & PR), Government of Arunachal Pradesh, vide. No. CD-

583/99(E), which is a Personnel Policies for recruitment and engagement of staff for administration of DRDAs, wherein, in Clause (a), thereof, it is provided that the DRDA shall not have any regular staff by direct recruitment, whereas, the appointment of respondent no. 7 though termed as an appointment on temporary basis, but is, in fact, a regular appointment. He has further contended that the appointment of respondent no. 7 as LDC by the respondent authorities was made without any selection process and therefore, the same is in violation of the constitutional scheme of appointment, required to be made by the State authorities by adhering to Article 14 and 16 of the Constitution of India, for which, the impugned order of appointment given to the respondent no. 7 as LDC is liable to be set aside and quashed.

7. In support of his submission, Mr. Omo, learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court rendered in the case of ***the State of Orissa and Anr., vs. Mamata Mohanty***, reported in **(2011) 3 SCC 438**, for the proposition that all appointment by State authorities whether temporary or permanent is required to be made by following the Provision of Article 14 & 16 of the Constitution of India.

8. Mr. Picha, learned Standing counsel for the Rural Development Department, representing the respondents no. 3 to 6, on the other hand has submitted that OM, dated 20th May, 2003, referred to by the petitioner, which is a Personnel Policies for recruitment and engagement of staff for administration of DRDAs, however, does not mention the post of LDC. Therefore, the OM dated 20th May, 2003, which is a Personnel Policies for

recruitment and engagement of staff for administration of DRDAs, would not be applicable insofar as the post of LDC is concerned. He further submits that neither there is any Recruitment Rule or any Guideline in the Department for filling up the post of LDC. Under such a circumstance, contends Mr. Picha, learned Standing counsel for the Rural Development Department, the post of LDC in the Department can be filled up as per the wisdom of the employer. Therefore, in the instant case, the Department/employer has appointed the respondent no. 7 as LDC on being found to be more meritorious, efficient and productive than the petitioner, which was adjudged on the basis of the application submitted by the petitioner as well as the respondent no. 7 and hence, there has been no violation of Article 14 & 16 of the Constitution of India.

9. In support of his contention that in the absence of any Recruitment Rule or Guideline for filling up a particular post, the same has to be filled up as per the wisdom of the employer, Mr. Picha, has relied on a decision rendered by the Hon'ble Supreme Court, in the case of ***B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees Assn and Ors.,*** reported in, ***(2006) 11 SCC 731-II.***

10. Mr. Picha, learned Standing counsel, Rural Development Department, however, admits that before the respondent no. 7 was appointed as LDC, in the Department, there was no advertisement issued for filling up of the said post nor any recruitment process, within the Department was conducted.

11. Though, counter-affidavits by the respondents no. 1 & 2 have not been filed, Mr. N. Sora, learned counsel representing the respondent no. 1; Mr. I.

Riram, learned Additional Senior Government Advocate for the respondent no. 2 and Mr. S. K. Deori, learned counsel for the respondent no. 7 have endorsed the argument advanced by Mr. Picha, learned Standing counsel for the Rural Development Department.

12. Rival contentions advanced by the learned counsels for the contesting parties have received due consideration of this Court and the materials placed on record have been perused.

13. Upon hearing the learned counsels appearing for the parties and on perusal of the materials placed on record, there is no dispute that the petitioner was appointed as Skilled Contingent Typist under the DRDA, Ziro, for a period of 6 (six) months, w.e.f. date of her joining to the post, vide order dated 28th July 2009, issued by the Deputy Commissioner-cum-CEO, District Rural Development Agency, Lower Subansiri District, Ziro, vide Memo No. DRDA/ESTD-27/94 and the respondent no. 7 was appointed on 24.11.2016 as Technical Assistant (MIS) on contract basis for a period of one year from the date of joining, vide order dated 24th November 2016, issued by the Deputy Commissioner-cum-DPC, District Rural Development Agency, Lower Subansiri District, Ziro, vide Memo No. DRDA/ESTT/MGNREGA/15/2015-16 and both the petitioner and the respondent no. 7 are continuing in their service, as such.

14. There is also no dispute on the fact that OM, dated 20th May, 2003, issued by the Secretary (RD & PR), Government of Arunachal Pradesh, vide. No. CD-583/99(E), is a Personnel Policies for recruitment and engagement of

staff for administration of DRDAs, in which, there is no mention of the post of LDC, though there are indications to the effect as regards the various other posts mentioned, therein, as to how the same are to be engaged or recruited in the DRDAs. Apart from the fact that the post of LDC in the DRDA does not find mention in the OM dated 20th May, 2003, as to how the same is to be filled up, from the submission advanced by Mr. Picha, the learned Standing counsel for Rural Development Department, it has also remained undisputed that there is neither a Recruitment Rule nor any Guideline issued by the Government for filling up the post of LDC in the DRDA. There is also no dispute on the fact that the appointment of the respondent no. 7 as LDC by the impugned appointment order dated 1st September, 2021, issued by the Deputy Commissioner-cum-CEO, District Rural Development Agency, Lower Subansiri District, Ziro, was issued without any recruitment process undertaken by the Department after the same was notified to the public at large.

15. In view of the undisputed fact that there is neither a Recruitment Rule nor any Guideline(s) issued by the Government for filling up the post of LDC in DRDA, it is not understood as to how and on what basis, the respondent authorities had selected the respondent no. 7 for appointment as LDC in the DRDA. Apart from the absence of any basis or yardstick for selection of the respondent no. 7 as LDC in the DRDA, no material has also been placed to indicate that the petitioner or the respondent no. 7 are qualified and eligible to be appointed as LDC in the DRDA, as it is an admitted and undisputed fact that there are neither Recruitment Rules nor any Guidelines prescribing

eligibility criteria and the method of recruitment for the post of LDC in the DRDA. Before the post of LDC in the DRDA can be filled up by the respondent authorities by following the constitutional scheme of appointment under Article 14 & 16 of the Constitution of India, the respondent authorities in the instant case is found to be required to first determine the manner and method by which the post of LDC is to be filled up in the Department along with the minimum eligibility criteria required for the post of LDC in the DRDA.

16. In the absence of any norms for filling up the post of LDC in the DRDA, as discussed hereinabove, the manner in which the respondent no. 7 has been appointed as LDC in the Department by the impugned order dated 1st September, 2021, issued by the Deputy Commissioner-cum-CEO, District Rural Development Agency, Lower Subansiri District, Ziro, cannot receive judicial approval from this Court.

17. The decision relied on by the learned Standing counsel for the Rural Development Department, in the case of ***Srinivasa Reddy (supra)***, was a case where the relevant Act and the Rules for filling up the post of Managing Director of the Karnataka Urban Water Supply & Drainage Board, provided that the mode of appointment and tenure of appointment shall be at the discretion of the Government. Unlike the case of ***Srinivasa Reddy (supra)***, where the relevant Act and the Rules for filling up the post of Managing Director of the Karnataka Urban Water Supply & Drainage Board, provided that the same is to be filled up as per the discretion of the Government, in the instant case, there is neither any Rules nor any Guidelines bestowing

such discretion upon the employer to fill the post of LDC in the DRDA as per the wisdom of the employer. Accordingly, the case relied by the learned Standing counsel for the Rural Development Department is distinguishable and the same is not applicable in the facts and circumstance of the present case.

18. For the reasons and discussion made hereinabove, the impugned order dated 1st September, 2021, issued by the Deputy Commissioner-cum-CEO, District Rural Development Agency, Lower Subansiri District, Ziro, vide Memo No. DRDA/ESTT/2000/1141-44, whereby, the respondent no. 7 has been appointed as LDC, is hereby, set aside and quashed, on the ground that the same has been issued without any basis for such a selection such as the Rules or any Guidelines as well as in violation of the constitutional scheme of making appointment to a post by the State authorities, namely, Article 14 & 16 of the Constitution of India.

19. As the appointment of respondent no. 7 as LDC has been set aside on the grounds stated hereinabove, the second prayer of the petitioner for regularisation of her service from the date the respondent no. 7 was appointed as LDC, can also be not granted by this Court as there exists no Rules or Guidelines to indicate that the petitioner is eligible and qualified to be appointed as LDC in the DRDA for want of Recruitment Rules or any Guidelines to that effect.

20. Accordingly, the writ petition stands disposed of, in terms above, with a further direction to the respondent authorities that in the event the

respondent authorities decide to fill up the vacant post of LDC, the same shall be filled up after the manner and method of filling up of the post of LDC in the DRDA is determined and also by putting up a public advertisement in the newspaper for filling up the vacant post.

21. No cost.

JUDGE

Comparing Assistant