



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.317 of 2019

1. Shri Tarak Gongo,
Son of Late D. Gongo,
Resident of Gongo Village, PO:
Daporijo, District: Upper Subansiri,
Arunachal Pradesh, presently serving
as Assistant Engineer, Office of the
Executive Engineer, Sagalee Division,
District: Papumpare, Arunachal
Pradesh.

2. Shri Pema Norbu Khrame,
Son of Late Dorjee Khrame,
Resident of Rupa, District: West
Kameng, Arunachal Pradesh,
presently serving as Assistant
Engineer, Highway Sub-Division, PWD
Khonsa, District: Tirap, Arunachal
Pradesh.

.....Appellants

-Versus-

1. The State of Arunachal Pradesh,
represented by the Chief Secretary to
the Government of Arunachal
Pradesh, Itanagar, Arunachal
Pradesh.

2. The Commissioner & Secretary to
the Government of Arunachal
Pradesh, Public Works Department,
Itanagar, Arunachal Pradesh.

3. The Chief Engineer, Eastern Zone,
Public Works Department, Highway,
MOWB II, Itanagar, Arunachal
Pradesh.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Appellants : Mr. B.C. Das, Senior Advocate
assisted by Mr. D.N. Bhattacharya,
Advocate.

For the Respondents : Mr. B.D. Goswami, Additional
Advocate General, Arunachal Pradesh
assisted by Mr. A. Chandran,
Additional Senior Government
Advocate, Arunachal Pradesh.

Date of Judgment & Order : **28th March, 2023.**

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, C.J.]

This intra-Court writ appeal is directed against the common judgment & order dated 21.06.2018 passed by the learned Single Bench in WP(C) No.266(AP)/2016 (*Tarak Gongo -Vs- State of Arunachal Pradesh & Ors.*) and WP(C) No.267(AP)/2016 (*Pema Norbu Khrieme -Vs- State of Arunachal Pradesh & Ors.*).

2. The writ petitioners/appellants, who joined services in the Public Works Department (PWD), Government of Arunachal Pradesh as Junior Engineers in the year 1992, seek a direction for counting their officiating services as Assistant Engineer (Civil) from 19.03.1996 to 14.02.2013 as regular service. Pursuant to the judgment &

final order dated 16.10.2015 passed by this Court in the previous round of litigation, i.e. WP(C) No.339(AP)/2014 and WP(C) No.340(AP)/2014, the DPC meeting was convened to consider the representations of the writ petitioners/appellants and after deliberating upon the issues, DPC decided not to count the period during which, the writ petitioners/appellants were performing duties as officiating Assistant Engineers towards regular service and consequently their claim for seniority by counting the said period was turned down. The writ petitions preferred by the writ petitioners/appellants stand rejected by the learned Single Bench vide common order dated 21.06.2018, which is assailed in the present writ appeal.

3. Heard Mr. B.C. Das, learned senior counsel, assisted by Mr. D.N. Bhattacharya, learned counsel representing the appellants. Also heard Mr. B.D. Goswami, learned Additional Advocate General, Arunachal Pradesh, assisted by Mr. A. Chandran, learned Additional Senior Government Advocate, Arunachal Pradesh, representing the respondents.

4. Mr. Das, learned senior counsel representing the writ petitioners/appellants drew the Court's attention to the observations (infra) made by the learned Single Bench in the earlier round of litigation, i.e. WP(C) No.339(AP)/2014 and WP(C) No.340(AP)/2014, and urged that by virtue of these observations, it is no longer a matter of dispute that the seniority of the writ petitioners/appellants is required to

be counted from the respective dates of *ad-hoc*/officiating appointments as Assistant Engineer and not from the date of their regularization in services and that officiating period has to be counted for considering seniority. The learned senior counsel contended that the findings recorded by the DPC and the consequential order dated 29.04.2016 passed by the State of Arunachal Pradesh, runs in gross contravention to the observations made and the directions given by the learned Single Bench in the order dated 16.10.2015. Operative portion of the order dated 29.04.2016 reads as under:-

“6. AND WHEREAS, the DPC has also taken note of the fact that when they were appointed on adhoc basis as Assistant Engineer, both were far below in the seniority list and did not come even within the zone of consideration. Their appointment as Assistant Engineer on adhoc basis was not done according to provisions of Recruitment Rules. If both Shri Tarak Gongo and Shri P.N. Khramey are allowed seniority from the date of appointment, it will amount to double jeopardy to his seniors who have been given regular promotion as per recommendation of the DPC that met on 21/01/2013 on the basis of seniority cum fitness reservation policy of the Government etc. with effect from the date of DPC recommendation.

7. NOW THEREFORE, the Governor of Arunachal Pradesh is of the considered view that the recommendation of Group-A DPC which met on 21/01/2013 is just and fair and there is no ground to depart from their recommendation. The representation of Shri Tarak Gongo, Assistant Engineer and Shri P.N. Khramey, Assistant Engineer for counting of their seniority from the date of his adhoc appointment are without merit and therefore rejected.”

5. Mr. Das urged that the learned Single Bench while rejecting the present two writ petitions, has virtually reviewed its own decision dated 16.10.2015 thereby

affirming the grossly arbitrary order passed by the Government whereby, the services of the writ petitioners/appellants while they officiated as Assistant Engineers were not counted as regular services and were not reckoned for the purposes of determining seniority. He thus, urged that the impugned order passed by the learned Single Bench and the order dated 29.04.2016 passed by the State Government deserve to be reversed/suitable modified and a direction be issued to the respondents to grant seniority to the writ petitioners/appellants from the date they started serving in the cadre of Assistant Engineers on officiating basis. In support of his contentions, Mr. Das has placed reliance on the judgments of the Apex Court in the cases of ***Narender Chadha & Ors. -Vs- Union of India & Ors.***, reported in ***(1986) 2 SCC 157*** and ***Direct Recruit Class-II Engineering Officers' Association -Vs- State of Maharashtra & Ors.***, reported in ***(1990) 2 SCC 715***.

6. Per contra, Mr. B.D. Goswami, learned Additional Advocate General, Arunachal Pradesh vehemently and fervently opposed the submissions advanced by the learned senior counsel for the appellants. He pointed out that vide order dated 16.10.2015 passed in the earlier round of litigation, the learned Single Bench, gave the following directions to the State authorities:-

“26. In views of all above, matter is referred to the respondent authorities to appreciate all the aspects by holding proper DPC by taking into account that seniority of the petitioners will be counted from the date of appointment and not from the date of regularization, and officiating period is to be counted for considering

seniority. Qualifying period for promotion shall be considered as per recruitment rules. The respondent authority will prepare a seniority list/gradation list positively and place the same before the DPC for determining all aspect of controversy. It is also noted that the petitioners have already filed their representation immediately after the aforesaid order vide application dated 17-06-2013 and 18-03-2014 but the same are yet to be adjudicated by the respondent authorities.”

7. Mr. Goswami contended that the observations made in the initial part of Paragraph 26 of the judgment & order cannot be read in isolation and must be considered in context to the actual factual position emanating from record. He urged that while making a superficial observation that the DPC shall be held by taking into account that seniority of the writ petitioners/appellants will be counted from the date of appointment, the learned Single Judge further clarified that qualifying period for promotion shall be considered as per Recruitment Rules. It is submitted that the DPC meeting convened on 21.01.2013 for considering the representations of the writ petitioners/appellants pursuant to the said judgment & order, considered the applicable Rules and the ratio of the judgment of the Apex Court in the case of ***Direct Recruit Class-II Engineering Officers' Association*** (supra) [Paragraphs 47(A) & 47(B)] and thereafter, arrived at a considered conclusion that when the writ petitioners/appellants were appointed as Assistant Engineers on officiating basis, both were far below in the seniority list and did not come even within the zone of consideration. Their appointment on *ad-hoc*/officiating basis was not done as per the provisions of the Recruitment Rules. If these

2(two) Engineers were allowed seniority from the date of appointment, it would adversely impact the seniority of their seniors, who had been given regular promotion vide recommendations of the DPC convened on 21.01.2013. The State Government granted its imprimatur to the DPC's findings by order dated 29.04.2016.

8. Mr. Goswami further contended that as many as 467 persons in the parent cadre of Junior Engineers were senior to the appellants. Without impleading them as party in the writ petition, the writ petitioners/appellants could not have sought revision of the seniority list because that precisely would be the consequence of treating the writ petitioners/appellants to be in regular service from the date of their *ad-hoc*/officiating appointment as Assistant Engineers. He has further submitted that as a matter of fact, the learned Single Judge has clearly explained the earlier order passed in the writ petitions preferred by the writ petitioners/appellants and that there is no anomaly in the 2(two) orders. He thus, implored the Court to dismiss the writ appeal.

9. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned order/materials placed on record.

10. At the outset, we may note that the foundation of relief sought for by the writ petitioners/appellants in this appeal is the observation made by the learned Single Judge in Paragraph 26 of the judgment & order dated 16.10.2015

passed in the earlier round of litigation, which has been reproduced (supra). We may also note that before this order came to be passed, the DPC for considering promotion of the writ petitioners/appellants had been convened and recommendation dated 21.01.2013 was made promoting the writ petitioners/appellants from the date of the recommendation.

11. Pursuant to the said recommendation, WP(C) No.339(AP)/2014 and WP(C) No.340(AP)/2014 were filed praying that the respondents may be directed to count the seniority of the writ petitioners/appellants by counting their officiating period of uninterrupted service as Assistant Engineers with effect from 19.03.1996. While deciding the earlier round of litigation vide order dated 16.10.2015, the learned Single Judge at Paragraph 22 observed thus:-

“22. It is well settled that the matter of promotion will only be considered by the DPC, which will be final for the Department concerned and it can be challenged only there appears in perversity and illegality in the decision of the DPC. The petitioners have brought nothing on record to show the findings of the DPC neither it has been challenged. Similarly, the petitioners have not furnished any sorts of list about other employees in the establishment who may be junior or senior to them so as to assess that their seniority has been denied by the respondent authority.....”

12. From a bare perusal of the aforesaid observations, it is clear that the findings of the DPC were never challenged by the writ petitioners/appellants in the writ petitions filed in the year 2014. Likewise, they did not furnish the details of other employees in the establishment with reference to their seniority position. The learned

Single Bench, thereafter, proceeded to refer to certain observations made by the Division Bench in WP(C) No.1382/2006 filed by the petitioners. We are of the firm view that these observations of the Division Bench, which we shall advert to later, would conclude the issue against the writ petitioners/appellants beyond all manner of doubt. On an overall appraisal, we find that the learned Single Judge, while deciding the previous set of writ petitions, seems to have overlooked the pertinent findings recorded in Paragraphs 16, 17 & 18 of the order dated 22.05.2009 passed in WP(C) No.1382/2006 (DB) filed by the petitioners. Paragraphs 16, 17 & 18 of the order dated 22.05.2009 read as under:

“16. The order dated 15.2.2006 indicates that in so far as APST candidates are concerned, regular promotions have been made upto serial No. 379 of the seniority list of Junior Engineers. The above facts amply demonstrate that the petitioners are not due for regular promotion and, in fact, such promotions conferred to them had the affect of causing supersession of a large number of seniors. Besides such promotions were made without any reference to the DPC. If the above are the undisputed facts of the case, we do not find any infirmity in the order dated 15.2.2006 in so far as interference with regular promotion orders of the petitioners in WP(C) Nos.1382/2006 and 145/2009 are concerned.

17. In so far as the reversion of the said petitioners to the cadre of Junior Engineer is concerned, arguments have been advanced to the effect that the show cause notice dated 6.5.2004 had contemplated that in the event regular promotions are to be cancelled, the petitioners would continue to hold the same posts on officiating basis. Furthermore, it has been submitted that the petitioners have worked as Assistant Engineer for long, in fact, over a decade.

18. The aforesaid facts, though not altogether irrelevant, cannot override the determination that has already been made to the effect that the petitioners by virtue of their seniority in

the cadre of Junior Engineer were not entitled to promotion either on officiating or on regular basis to the next higher post of Assistant Engineer. The petitioners are presently continuing in the post of Assistant Engineer under orders of the Court. As the petitioners have continued for long and they must have come up to higher levels of seniority, while affirming the order dated 15.2.2006 in so far as the petitioners in WP(C) Nos.1382/2006 and 145/2009 are concerned, we are of the view that their continuance in the post of Assistant Engineer on officiating basis is a matter that should be left to be determined by the authorities of the State. The authorities of the State in doing so will take into account the fact as to whether if the petitioners are to be allowed to continue on officiating basis any prejudice will be caused to any of their seniors. If such prejudice is caused to any senior, naturally, such officiating arrangement will not be allowed. However, in the event no such prejudice results, the authorities will be at liberty to allow the petitioners to continue in the post of Assistant Engineer on officiating basis.”

(Emphasis supplied)

13. A bare perusal of the aforesaid observations completely negates the contentions advanced on behalf of the writ petitioners/appellants that they are entitled to claim seniority from the date they started officiating on the post of Assistant Engineers. The Division Bench, recorded a clear finding in the order dated 22.05.2009 that the writ petitioners/appellants were not due for regular promotion and that their *ad-hoc* promotion had the effect of causing supersession of large number of seniors; that they were not entitled for promotion either on officiating or on regular basis to the next higher post of Assistant Engineers. Thus, no further litigation on this aspect could have been entertained on behalf of the writ petitioners/appellants at least in this Court. While adjudicating upon the issue, the learned Single Judge, extracted the later part of the observations made by the Division Bench in Paragraph 18

of the order dated 22.05.2009 while omitting the preceding eight lines (highlighted supra). These findings, completely demolish the claim of the writ petitioners/appellants to have their *ad-hoc* officiating services counted for the purpose of seniority in the cadre. As a matter of fact, the challenge laid by the writ petitioners/appellants in WP(C) No.339(AP)/2014 and WP(C) No.340(AP)/2014 was misconceived and baseless and the petitions merited rejection in *limine* had the order dated 22.05.2009 passed by the Division Bench been construed objectively.

14. Thus, there is no merit in the contention advanced by Mr. B.C. Das, learned senior counsel representing the appellants that the appellants are entitled to be considered as regularly appointed Assistant Engineers and consequent seniority in the cadre from the date they were allowed to initiate in the said capacity. The view taken by the learned Single Bench in rejecting the writ petitions filed by the writ petitioners/appellants vide judgment & order dated 21.06.2018 does not suffer from any infirmity warranting interference.

15. Hence, the writ appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant