

GAHC040001342017



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

Case No. : WP(C)/257/2017

MISS HOGGE KARBI and
D/O SHRI DUSOK KARBI, RESIDENT OF KOMBO TARSU MOBUK,
VILLAGE, PO/PS AAL, WEST SIANG DISTT. AP. M-9436690842 2: MISS
YOMBOM PAYUM

Age:

Occupation :

3: MR. LIDAM INGO

Age:

Occupation

VERSUS

THE STATE OF A.P. and 8 Ors.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, HEALTH
SERVICE, GOVT. OF AP, ITANAGAR. 2: THE DIRECTOR

Age: 0

Occupation :

3: THE JOINT DIRECTOR

Age: 0

Occupation :

4: THE DISTRICT MEDICAL OFFICER

Age: 0

Occupation :

5: SHRI HUGGAM RIRAM

Age: 0

Occupation :

6:SHRI ENGAM ZIRDO

Age: 0

Occupation :

7:MISS YOMPI ETE

Age: 0

Occupation :

8:MISS DOSUM JINI

Age: 0

Occupation :

9:SMTI YANYA BAGRA

Age: 0

Occupation

Advocate for the Petitioner : A Timung

Advocate for the Respondent : Mr.D Loyi

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER(ORAL)

Date : 06.03.2024

Heard Mr. M. Kato, learned counsel for the petitioners. Also heard Mr. T. Tagum, learned standing counsel for the Health and Family Welfare Department and Mr. J. Jini, learned counsel for the private respondent Nos. 5 to 9.

2. The petitioners by way of instituting the present proceedings have assailed the appointment orders issued in favour of the respondent Nos. 5 to 9, appointing them against the post(s) of Multipurpose Workers (MPW) on the

ground that the names of the said respondents did not figure in the select list published for the purpose of recruitment against the said post(s).

3. The petitioners in pursuance to an advertisement issued by the Deputy Commissioner-cum-Chairman, District Recruitment Board, West Siang, Aalo inviting applications for nine post(s) of MPW had submitted their respective applications for recruitment against the said post(s). On conclusion of the selection process, a select list came to be published and therein, the names of the petitioners came to be placed at serial No. 8, 9 & 10. It is to be noted that the petitioners were denoted as wait list candidates No. 1, 2 & 3 respectively, in the said select list. Persons figuring in the said select list at merit positions No. 1 to 7 came to be appointed. As the petitioners were legitimately expecting that appointment orders would be issued to them against the post(s) of MPW in the event any vacancy arising amongst the post(s) so advertised, were shocked to come across orders of appointing the respondent Nos. 5, 6, 7, 8 & 9 to the post(s) of MPW, in spite of the fact that the names of the said respondents did not figure in the select list dated 21.10.2016.

It is the contention of the petitioners that the respondent Nos. 5 to 9 were so appointed without requiring them to participate in the recruitment process as initiated vide the advertisement, dated 24.08.2016 and the appointment of the said respondents not being in pursuance to a duly conducted selection process, such appointments cannot be sustained and requires to be interfered by this Court. It is further prayed that on interference with the orders of appointment issued in respect of the respondent Nos. 5 to 9, the post(s) so becoming vacant is required to be filled up by appointing the petitioner from the select list available in the matter.

4. The respondent State has entered appearance in the matter by way of filing

an affidavit and in the affidavit, it was brought on record that the respondent Nos. 5 to 9 were not so appointed against the post(s) advertised vide the advertisement, dated 24.08.2016, but the said respondents being contingency (FW) workers were so regularized against the regular post(s) created by the Government for such purpose. It is further contended that for the purpose of regularizing contingency workers against regular post(s), no selection is called for and such regularization is effected basing on service seniority of the contingency workers. It is contented that the petitioners not being contingency workers, they have got no locus to challenge the appointment of the respondents No. 5 to 9.

5. The learned counsel for the private respondent Nos. 5 to 9 have adopted the arguments as advanced by the learned standing counsel for the Health and Family Welfare Department and has further contended that the source of power for appointing the private respondents and the candidates recruited in pursuance to the advertisement dated 24.08.2016 being relatable to two distinct sources, the petitioners cannot be held to be prejudiced in any manner on account of the appointments effected in the case of the respondents No. 5 to 9 herein. Accordingly, it is prayed that this Court would be pleased not to interfere with the appointments as effected in respect of the respondent Nos. 5 to 9 by the authorities.

6. I have heard the learned counsels for the parties and also perused the material brought on records.

7. As revealed from the affidavit as filed by the respondent authorities, the government had created 597 post(s) of MPW vide orders dated 23.10.2015 and 13.04.2016. Out of the said 597 post(s) so created, 365 contractual MPW came to be regularised in their services and 9 post(s) were converted to RFW vide an

order dated 18.05.2016. Out of the remaining 232 numbers of post(s), 58 post(s) were allotted for regularization of the contingency workers whereas another 29 post(s) were kept reserved for appointment on compassionate grounds, for appointment of persons with benchmark disability as well as against sports quota. The balance 145 numbers of post(s) were distributed to various districts of the State for recruitment in their respective districts. Out of the 145 post(s) so distributed, 9 numbers came to be allotted to West Siang District and accordingly, the district authorities proceeded to issue the advertisement, dated 28.08.2016, initiating the recruitment process.

8. It is seen that the petitioners in the select list, dated 29.10.2016, were placed at serial No. 8, 9 & 10 on merits and they were accordingly denoted as to have been placed at waiting list No. 1, 2 & 3 respectively. 7 post(s) out of the 9 post(s) so advertised were filled up on merit from the said select list dated 29.10.2016, 2 post(s) as available was filled up by candidates who have participated in the process and were working as contingency staff, inasmuch as, 2 post(s) were kept reserved for the contingency staff in the said advertisement dated 24.08.2016.

9. The materials brought on record further reveals that the respondent Nos. 5 to 9 were working as contingency staff and accordingly, the Director of Health Services proceeded to appoint the said respondents against the 58 post(s) kept reserved out of the 597 newly created post(s) for regularisation of contingency staff. It is also reflected from the records that no person placed below the petitioners in the said select list dated 21.10.2016 was appointed in pursuance to the advertisement dated 24.08.2016. Accordingly, the petitioners not having come within the zone for appointment in view of the merit position as obtained by them in the selection held in pursuance to the advertisement dated

24.08.2016, the petitioners cannot maintain a claim for appointment from the select list dated 21.10.2016 after the post(s) advertised were duly filled up. It is settled law that a select list loses list validity upon the post(s) for which it was so prepared stands filled up. Accordingly, this Court holds that no prejudice was caused to the petitioners in the matter of recruitment to the post(s) of MPW in pursuance to the advertisement dated 24.08.2016.

10. This now brings this Court to consider the challenge as made by the petitioners with regard to the appointments effected in the case of the respondent Nos. 5 to 9. As noticed hereinabove, the respondents Nos. 5 to 9 were all working as contingency staff and accordingly, on 58 post(s) being so reserved for contingency staff out of the 597 newly created post(s), the concerned authorities considered the cases of the said respondents and proceeded to appoint them against a regular sanctioned vacant post(s). The petitioners in view of the nature of services rendered by the said respondents and a provision existing for appointing them against sanctioned vacant post(s), can raise no grievance with regard to the appointment effected in the cases of the said respondent Nos. 5 to 9. Further, the post(s) utilised for appointing the respondents Nos. 5 to 9 also did not fall within the quota earmarked for being filled up on direct recruitment basis. As such, the petitioners in any view of the matter can have no claim against the post(s) reserved for contingency staff.

11. On a query made by this Court to the learned counsel appearing for the respondent Nos. 5 to 9, it was contended that the said respondents were working as contingency staff and none of them have completed 20 years of such service. It is to be noted that as per the Rules/norms holding the field for regularisation of services of a contingency staff, such contingency staff must

have necessarily served continuously for a minimum period of 20 years. It is seen that none of the respondent Nos. 5 to 9 have completed 20 years of continuous service and as such they would not come within the purview of the Rules/norms holding the field for appointment of contingency staff against the regular vacant post(s).

12. The learned counsel for the respondent Nos. 5 to 9 has also brought to the notice of this Court that in the year 2023, the Cabinet of the State has taken a decision granting ex-post facto approval to the proposal for regularisation of the services of MTS appointed from serving contingency staff who have not completed 20 years of services. In the present proceedings, this Court is required to examine the legality and validity of the appointment effected in the cases of the private respondent Nos. 5 to 9 in the year 2016. Applying the norms as applicable, it is seen that the respondent Nos. 5 to 9, admittedly, did not possess the eligibility criteria for being appointed against regular vacant post(s) and as such, the orders issued in favour of the respondent Nos. 5 to 9 cannot be sustained.

13. However, this Court, in view of the submissions made by the learned counsel for the respondent Nos. 5 to 9 that there is already a Cabinet decision granting ex-post facto approval towards regularisation of services of MTS appointed from serving contingency workers who have not completed 20 years of service, remands back the matter to the Director of Health Services, Government of Arunachal Pradesh to examine the matter and in the event, it is found that the cases of the petitioners are covered by the Cabinet decision, stated to be in place granting approval to the appointment of contingency workers not completing 20 years of continuous service against regular vacant post(s), to proceed to issue appropriate orders, highlighting the said position

and confirming the appointment as effected in the cases of the private respondents in the year 2016. In the event, it is found that either there is no such Cabinet decision covering the cases of the private respondent Nos. 5 to 9 and/or the Cabinet decision stated to have taken is not applicable to the services of the respondent Nos. 5 to 9, the Director, Health Services shall after issuing individual notices in this connection to the respondent Nos. 5 to 9 and on receipt a response from them, proceed to revert them as contingency workers on the ground of not having completed 20 years of continuous service as contingency staff before being appointed against regular vacant post(s).

14. However, in the event a reversion is called for in cases of the respondent Nos. 5 to 9, it is directed that the benefits that they may have drawn till the date of such reversion while working as MPW in terms of the appointment effected in their cases in 2016 shall not recovered.

15. With the above directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant