

GAHC040002132019

2024:GAU-AP:1139



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

Case No. : WP(C)/212/2019

SHRI TAKO KAJI

S/O TANU KAJI, PRESENTLY SERVING AS A CONTINGENCY DRIVER, OFFICE
OF THE DIRECTORATE OF FOOD AND CIVIL SUPPLIES, NAHARLAGUN,
AP.PHONE NO. 9402617870

VERSUS

THE STATE OF A.P. AND 5 ORS.

REPRESENTED BY THE SECRETARY, FOOD AND CIVIL SUPPLIES, GOVT.
OF AP, NAHARLAGUN.

2:THE SECRETARY OF FOOD AND CIVIL SUPPLIES

Age: 0 Occupation : NAHARLAGUN GOVT. OF AP.

3:THE DEPARTMENTAL PROMOTION COMMITTEE DPC

Age: 0 Occupation :

HELD ON 23.07.2018 FOR RECOMMENDING REGULARIZATION OF THE
PRIVATE RESPONDENT AS HANDYMAN.

4:SHRI SANU TAMANG Age: 0 Occupation :

PRESENTLY SERVING AS A HANDYMAN IN THE OFFICE DIRECTORATE
OF FOOD AND CIVIL SUPPLIES NAHARLAGUN
PO NAHARLAGUN PAPUM PARE DIST. AP.

5:SHRI ANIBOR MILI Age: 0 Occupation :

PRESENTLY SERVING AS HANDYMAN IN THE OFFICE DIRECTORATE OF
FOOD AND CIVIL SUPPLIES NAHARLAGUN
PO NAHARLAGUN PAPUM PARE DIST. AP

Advocate for the Petitioner : MR.V Jamoh, H Kadu,B Padung,Marge D,M Gibi,Mr.M Doji,MS.D
Tamuk,MrD Panging

Advocate for the Respondent : Ninnong Ratan, GA (AP),,,,,,K Loya,Tamo Taggu,Tummin Ete,Kabi
Gamlin

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

Date of hearing : 16.12.2024

Date of Judgment : 16.12.2024

JUDGMENT & ORDER(ORAL)

Heard Mr. Dicky Panging, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Subu Tapin, learned Senior Government Advocate, appearing on behalf of Respondents No. 1, 2, 3 & 4; and Mr. Punyo Harming, learned counsel, appearing on behalf of Respondents No. 5 & 6.

2. The petitioner, herein, by way of instituting the present writ petition, has presented a challenge to an order, dated 26.07.2018, by which the services of the Respondents No. 5 & 6 were regularized against the post of Handyman. The petitioners have also assailed the recommendations of the Departmental Promotion Committee(DPC) held on 23.07.2018 basing on which the impugned order, dated 26.07.2018, came to be issued.

3. As projected in the writ petition; the petitioner, herein, was engaged as an unskilled daily labour in the Directorate of Supply & Transport, Government of Arunachal Pradesh, vide order, dated 01.04.2010. It is contended that the petitioner having possessed driving skills, he was on his such engagement, as an unskilled daily labour, engaged for the duties of a Driver. The petitioner is now posted in the Directorate of Supply & Transport at Naharlagun and his services, are being continued to be utilized as a Driver.

4. It is further projected in the writ petition that the Respondent No. 5, herein, was appointed as a Handyman, vide order, dated 13.01.2011, issued by the Director of Food & Civil Supplies, Government of Arunachal Pradesh, on

officiating basis, against a deputation vacancy available in the Directorate. Likewise, the Respondent No. 6, herein, was so appointed as a Handyman, vide order, dated 05.02.2012, on officiating basis against a vacancy arising on the incumbent therein, being promoted to the post of Driver. The appointment of the Respondent No. 6, so effected vide order, dated 05.02.2012, was for a period of 6(six) months in the said Directorate. However, the same was continued with.

5. It is also projected in the writ petition that in pursuance of the recommendations made by the Departmental Promotion Committee(DPC) on 23.07.2018; the appointment of the Respondents No. 5 & 6 as Handyman, on officiating basis, came to be regularized with effect from the date of the meeting of the Departmental Promotion Committee(DPC) i.e. on 23.07.2018.

6. Being aggrieved; the petitioner, herein, has instituted the present proceeding.

7. Mr. Panging, learned counsel for the petitioner, has submitted that the recruitment to the post of Handyman is governed by the provisions of the "Handyman Recruitment Rules, 1992", and in terms thereof, the said post is to be so filled-up by way of direct recruitment only.

8. Mr. Panging, learned counsel, has further submitted that regularization of the services of Respondents No. 5 & 6, vide the orders, dated 13.01.2011, and 05.02.2012, respectively, was so effected without following the provisions of the said Recruitment Rules of 1992.

9. Mr. Panging, learned counsel, has also submitted that the order so issued towards regularizing the services of the Respondents No. 5 & 6, herein, does not reflect that the power of relaxation as provided in the provisions of the said Recruitment Rules of 1992, was so invoked. The learned counsel has further clarified that the power of relaxation as provided in the said Recruitment Rules of 1992, could not have also been invoked for relaxing the recruitment conditions so prescribed for the post of Handyman.

10. In the above premises, Mr. Panging, learned counsel for the petitioner, has submitted that the impugned order, dated 26.07.2018, would call for an interference.

11. Mr. Tapin, learned Senior Government Advocate, has, at the outset, submitted that the Respondents No. 5 & 6, on being so appointed on officiating basis as Handyman and their services being found to be satisfactory; their cases came to be placed before the Departmental Promotion Committee (DPC) for regularization of their services.

12. Mr. Tapin, learned Senior Government Advocate, has further submitted that the Departmental Promotion Committee(DPC) on considering the service records of the Respondents No. 5 & 6, herein, in its meeting held on 23.07.2018; proceeded to recommend the names of the Respondents No. 5 & 6 for regularization of their services. Accordingly, the Director of Food & Civil Supplies, Government of Arunachal Pradesh, vide the impugned order, dated 26.07.2018, basing on the recommendations so made by the Departmental Promotion Committee(DPC); proceeded to regularize the officiating appointment of the Respondents No. 5 & 6, as Handyman.

13. Mr. Tapin, learned Senior Government Advocate, has also contended that the order, dated 26.07.2018, issued towards regularizing the services of the Respondents No. 5 & 6, having been so issued, after recommendation of the Departmental Promotion Committee(DPC) in the matter was so received; no illegality was committed by the respondent authorities in regularizing the services of the Respondents No. 5 & 6.

14. Mr. Tapin, learned Senior Government Advocate, has further contended that the petitioner, herein, having been engaged only as an unskilled daily labour and his service utilized for the works of a Driver, would not have any locus to assail the regularization so effected in respect of the Respondents No. 5 & 6, herein, vide the impugned order, dated 26.07.2018, against the posts of Handyman. Mr. Tapin, learned Senior Government Advocate, has, therefore, submitted that the said order, dated 26.07.2018, would not call for any interference from this Court.

15. Mr. Harming, learned counsel appearing for Respondents No. 5 & 6, has adopted the arguments so advanced by Mr. Tapin, learned Senior Government Advocate, and has further submitted that the Respondents No. 5 & 6, have continued in their regular services in pursuance of the order, dated 26.07.2018, and have by now, completed more than 6(six) years of such regularized services. Mr. Harming, learned counsel, has, accordingly, prayed that the order, dated 26.07.2018, may not be interfered with by this Court at the instance of the petitioner, herein, who, admittedly was never engaged for the works of a Handyman in the Directorate of Food & Civil Supplies.

16. I have considered the submissions advanced by the learned counsels appearing for the parties and also duly perused the materials made available

on record.

17. It is not disputed that the petitioner, herein, was working in the Directorate of Supply & Transport, on his engagement as an unskilled daily labour vide order, dated 01.04.2010. It is further not disputed that the service of the petitioner, on his such engagement, was being utilized as a Driver, till date.

18. The respondents No. 5 & 6, herein, were so appointed vide orders, dated 13.01.2011, and 05.02.2012, respectively, against the posts of Handyman on officiating basis against the vacancies arising on account of the incumbents holding the posts of Handyman, proceeding on deputation and/or being promoted to the next higher post. The orders, dated 13.01.2011, and 05.02.2012, respectively, while appointing the Respondents No. 5 & 6, had a stipulation incorporated therein, that the said officiating appointment is purely on temporary basis and liable to be terminated at any point of time. Further, in the order, dated 05.02.2012, appointing the Respondent No. 6 to the post of Handyman, on officiating basis; a stipulation to the effect that the officiating appointment so made in his respect in addition to it being made purely on temporary basis, would not confer any right on him to claim regular appointment in the future, was also incorporated.

19. The recruitment to the post of Handyman as existing in the Directorate of Supply & Transport, is governed by the provisions of the "Handyman Recruitment Rules, 1992". In terms of the said Recruitment Rules of 1992, the post of Handyman is mandated to be so filled up by way of direct recruitment.

20. Further, 80% of the post of Handyman so governed by the said Recruitment Rules of 1992, is also stipulated to be so reserved for the Arunachal Pradesh Scheduled Tribe (APST) candidates.

21. The minutes of the Departmental Promotion Committee(DPC) as placed before this Court by Mr. Tapin, learned Senior Government Advocate, during the course of the hearing today, reveals that the consideration so extended for regular appointment against the post of Handyman as existing in the Directorate of Supply & Transport, was confined to the cases of the Respondents No. 5 & 6, herein. Accordingly, on consideration of the matter; the Departmental Promotion Committee(DPC) had recommended for regularization/appointment of the Respondents No. 5 & 6, respectively, to the posts of Handyman against the vacant posts so available in the Directorate.

22. Basing on the said recommendations as made by the Departmental Promotion Committee(DPC); the Director of Food & Civil Supplies, Government of Arunachal Pradesh, vide order, dated 26.07.2018, proceeded to regularize the officiating appointment of the Respondents No. 5 & 6, herein, as Handyman w.e.f. 23.07.2018, i.e. the date on which the Departmental Promotion Committee(DPC) had made recommendations in this connection.

23. It is to be noted that the State respondents in their affidavit so filed in the matter; had not brought on record, any material to demonstrate that the initial appointment of the Respondents No. 5 & 6, on officiating basis, against the posts of Handyman, was so effected after following a due selection process as contemplated under the provisions of the Rules holding the field.

24. The said Recruitment Rules of 1992 having mandated that the post of Handyman would be required to be so filled-up by way of direct recruitment only, it was not open to the respondent authorities to proceed to fill-up the said post by regularizing the officiating appointment of the Respondents No. 5 & 6, respectively, so made in the Directorate.

25. It is a settled position of law that a provision of Rule framed under Article 309 of the Constitution of India, cannot be deviated by the State respondents under any circumstance. Further, the materials brought on record, do not reveal that for the purpose of regularizing the services of the Respondents No. 5 & 6, herein; the Governor of Arunachal Pradesh had accorded approval for relaxation of any of the provisions of the Rules holding the field. Further, it is also a settled position of law that the Rules of recruitment, cannot be relaxed.

26. In the above view of the matter; the regularization of the Respondents No. 5 & 6, herein, so effected vide the order, dated 26.07.2018, on being found to be in violation of the provisions of the said Recruitment Rules of 1992; the same cannot be sustained and would call for an interference.

27. In view of the above conclusions so reached; this Court is of the considered view that the order, dated 26.07.2018, cannot be sustained and accordingly, the same stands set aside.

28. Having set aside the order, dated 26.07.2018, it is directed that the respondent authorities would now fill-up the posts of Handyman so held by the Respondents No. 5 & 6 on regular basis by way of instituting a recruitment process, strictly, in accordance with the "Recruitment Rules of Handyman,

1992", and thereby, afford an opportunity to all eligible candidates including the petitioner, herein, as well as the Respondents No. 5 & 6, herein, to have their respective cases so considered, for recruitment against the said posts.

29. The respondent authorities would now issue advertisement as called for in the matter within a period of 2(two) months from the date of receipt of a certified copy of this order and thereafter, proceed to take the process of recruitment to its logical conclusion and effect appointments against the vacant posts of Handyman as available in the Directorate of Food & Civil Supplies, of candidates so found suitable in the recruitment process.

30. It is further provided that till the process of recruitment is so concluded and appointments effected thereon, the Respondents No. 5 & 6, would be permitted to continue in their respective services against the post of Handyman on officiating basis in terms of the orders, dated 13.01.2011 and 05.02.2012. However, such continuation of the Respondents No. 5 & 6, would be till appointments are so effected in pursuance of the recruitment process now directed to be so initiated and concluded by this Court, hereinabove.

31. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant