

GAHC040006382022



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

Case No. : WP(C)/197/2022

Gambom Diyum
D/o Late Jumsor Diyum,
Resident of Abo Tani Colony, Itanagar, PO/PS Itanagar, District Papumpare,
Arunachal Pradesh.
Ph. No. 8837097180

VERSUS

The Arunachal Pradesh Information Commission and 2 Ors.
Represented through the Registrar, Arunachal Pradesh Information Commission,
Govt. of Arunachal Pradesh.

2:The Departmental Promotion Committee (DPC)
Age: 0
Occupation :

3:Hage Ampu
Age: 0
Occupation

Advocate for the Petitioner : Kemo Lollen

Advocate for the Respondent : Rintu Saikia

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 01.08.2024

Heard Mr. Kemo Lollen, learned counsel for the petitioner. Also heard Mr. R. Saikia, learned Standing Counsel for the respondent Nos. 1 & 2.

- 2.** None appears for the respondent No. 3, despite receipt of notice.
- 3.** By instituting this writ application, the petitioner has prayed for a direction to the respondent authorities to appoint her on an existing vacant post of MTS on the ground that the Departmental Promotion Committee (DPC) has considered the case of the petitioner and had kept pending till the decision of seniority position of the petitioner is decided by the competent authority and same already been determined.
- 4.** The case of the petitioner, in nutshell, is that the petitioner along with 2(two) other persons including the respondent No. 3 were engaged as unskilled contingent staffs by the Arunachal Pradesh Information Commission on daily wage basis since 01.11.2011. The petitioner was appointed vide appointment order No. SIC-09/2010 dated 20.03.2012 along with 2(two) other persons namely Mrs. Nyadam Gamlin and Ms. Hage Ampji, respondent No. 3 herein. The service of the petitioner was extended from time to time.

5. It is projected that the authorities have created 25(twenty-five) various categories of posts for the Arunachal Pradesh Information Commission and the financial approval was accorded on 05.08.2015. Out of total 25(twenty) various posts, 10(ten) posts were group-C MTS.

6. The Departmental Promotion Committee (DPC) was held on 02.06.2020, inter-alia, for consideration of the appointment of the petitioner along with eligible persons. The Departmental Promotion Committee (DPC) considered the case of 13(thirteen) unskilled contingency staff along with the petitioner. The Departmental Promotion Committee (DPC) on the representation of the petitioner, was of the view that since the petitioner claims to be senior to the respondent No. 3 who was appointed on the same date, decided to defer until the seniority between the petitioner and the respondent No. 3 is decided. The Arunachal Pradesh Information Commission has, thereafter referred the matter to Government for its decision as both the petitioner and the respondent No. 3 were appointed on the same date on 01.11.2011.

7. The Government, vide opinion dated 06.07.2021, has opined that since the Hon'ble Supreme Court has already decided and settled the principle for determination of seniority of Officer who were recommended on the same date, age is the only valid and fair basis as such their seniority should be decided on the basis of age of the candidates who have been recommended. Since, the present issue is of the similar nature therefore, the age should be determining

factor to be taken for determination of the seniority if the candidates were appointed and joined on the same date.

8. Thereafter, the respondent authorities have prepared the inter-se seniority of group-C (un-skilled) wherein, the petitioner is placed at serial No. 5 above the respondent No. 3 on the basis of the age, as per the opinion of the Government.

9. Mr. Kemo Lollen, learned counsel for the petitioner submits that despite the issue being settled with regard to the seniority as the petitioner has been placed senior to the respondent No. 3 on the basis of the age. Admittedly, the petitioner is older than the respondent No. 3, as the date of birth of the petitioner is 02.02.1986 and the date of birth of the respondent No. 3 is 05.06.1987. The right has accrued to the petitioner as the Departmental Promotion Committee (DPC) has already considered the case of the petitioner and other eligible candidates and the matter was deferred only to ascertain the seniority between the petitioner and the respondent No. 3. Since the issue has been finally determined, there is no reason to withhold the regularization and appointment of the petitioner as MTS in terms of the Departmental Promotion Committee (DPC) conducted on 02.06.2020, therefore, he submits that the respondent authorities may be directed to regularize and appoint the petitioner in the vacant post of MTS with effect from 02.06.2020 i.e., from the date of Departmental Promotion Committee (DPC).

10. Mr. R. Saikai, learned Standing Counsel, APIC for the respondent Nos. 1 & 2, fairly submits that since the issue of seniority has already been determined, the case of the petitioner shall be considered as and when fresh Departmental Promotion Committee (DPC) is held and the seniority of the MTS has to be considered as per the seniority list prevailing then.

11. I have considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

12. There is no dispute that the petitioner and the respondent No. 3 were engaged since 01.11.2011 and were appointed on 20.03.2012 and have joined on the same date. It is also not disputed that date of birth of the petitioner is 02.02.1986 and that the respondent No. 3 is 05.06.1987.

13. After referring the matter for the opinion of the government, the inter-se seniority of group-C (unskilled) was prepared and published on 21.07.2021 wherein the petitioner is placed above the respondent No. 3. The inter-se seniority list at page-69 of the writ petition is in currency. There is nothing to show that above seniority list has been put to challenge by the respondent No. 3.

14. The Departmental Promotion Committee (DPC) after consideration of all the eligible candidates for regularization/appointment to the post of MTS on a

vacant post, had deferred for final determination of the seniority between the petitioner and the respondent No. 3. By now, the issue of seniority has been determined, whereby the petitioner has been placed above the respondent No. 3.

15. Having considered the matter, this Court is of the view that since the Departmental Promotion Committee (DPC) has deferred the matter subject to the determination of the seniority between the petitioner and the respondent No. 3 and the same has been settled by now, whereby, the petitioner has been placed above the respondent No. 3, there is no reason as to why the case of the petitioner shall not be considered for appointment.

16. For reasons considered herein above, this Court is of the view that the petitioner has a right to be considered for regularization /appointment to the post of MTS, the suitability of which the Departmental Promotion Committee (DPC) has already been considered, subject to the determination of seniority between the petitioner and the respondent No. 3 and by now same has been settled. The respondent authorities are bound to regularized/appoint the petitioner in the vacant post of MTS with effect from the date of Departmental Promotion Committee (DPC) i.e., 02.06.2020.

17. Accordingly, the respondent authorities are directed to regularize/appoint the petitioner on a vacant post of MTS with effect from the date of

Departmental Promotion Committee (DPC) i.e., 02.06.2020.

In the result, this writ petition stands allowed and disposed of. No order as to costs.

JUDGE

Comparing Assistant