

GAHC040006712020



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

Case No. : WP(C)/263/2020

Nongki Tamuk
S/O SHRI TAKOP TAMUK, VILLAGE TEKANG, PO YAGRUNG, PS
PASIGHAT, DIST. EAST SIANG, A P.

VERSUS

The State of AP and 3 Others
RESPRESENTED BY THE SECRETARY, HORTICULTURE, GOVT. OF AP,
ITANAGAR. 2: THE DIRECTOR

Age: 0

Occupation :

HORTICULTURE

GOVT. OF AP

ITANAGAR.

3: THE DISTRICT HORTICULTURE OFFICER

Age: 0

Occupation :

EAST SIANG DISTRICT

GOVT. OF AP.

4: RANU PERME

Age: 0

Occupation :

(SKILLED CONTINGENCY)

C/O THE DIRECTOR (HORTICULTURE)

GOVT. OF AP

ITANAGAR

Advocate for the Petitioner : T Taki, Tabit Tapak, Y Pangu

Advocate for the Respondent : P Sangeeta, Tsering Gyatso, SC (Horticulture), Goter
Ete, Addl. Sr. Govt. Advocate

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 16.12.2024

Heard Mr. T. Tapak, learned counsel for the petitioner. Also heard Mr. T. Gyatso, learned Standing Counsel, Horticulture Department, for the respondent Nos. 1, 2 & 3.

- 2.** None appears for the respondent No. 4, despite service of notice.
- 3.** By filing this writ petition, the petitioner has prayed for a direction to the respondent authorities to release the arrear monthly wages and also for reinstatement/restoration of his service as skilled contingency, as he was appointed on the sanctioned post of skilled contingency.
- 4.** It is the case of the petitioner that he was appointed as skilled contingency in the Office of the District Horticulture Officer, Pasighat, East Siang District, Arunachal Pradesh, vide order dated 23.11.2017, by the District Horticulture Officer, East Siang District, Pasighat. On such appointment, the petitioner was serving as skilled contingency in a sanctioned post under the establishment of the District Horticulture Office, Pasighat. He was appointed on the post which had fallen vacant on the promotion of one Ms. Sum Darang on her promotion to the higher post of LDC.

5. The petitioner was paid his monthly wages up to February, 2019. However, the payment was stopped thereafter. Accordingly, he submitted various representations for release of arrear wages as well as the current wages. However, no action was initiated.

6. It is the contention of the petitioner that when the matter was pending consideration for release of the monthly arrear wages and the current wages, he came to know that one Ms. Ranu Perme, the respondent No. 4 herein, has also been appointed on 29.11.2017, by the Director of Horticulture at Itanagar, on the same sanctioned post in which post the petitioner was appointed.

7. Mr. T. Tapak, learned counsel for the petitioner submits that since the petitioner was engaged as skilled contingency in a sanctioned post by the competent authority, namely, the District Horticulture Officer, as the post falls under the District Office of the Department and the petitioner having been continued on the strength of appointment by the competent authority, he is entitled to his arrear wages and also to continue in the said post. He submits that although, the petitioner could not lay his hand to the appointment of the respondent No. 4, since the appointment of the respondent No. 4 appears to be by the Director, same is not sustainable as the appointing authority of the District post even if it is a skilled contingency post is to be by the District authority, namely, District Horticulture Officer. Therefore, he submits that direction may be issued to the respondent authorities to release the arrear monthly wages of Rs. 1,86,268/- (Rupees One Lakh Eighty-Six thousand Two hundred Sixty-eight) and also allow the petitioner to continue as skilled contingency worker in terms of the appointment order dated 23.11.2017.

8. This Court noticed that the respondent Nos. 2 & 3 have filed their respective affidavit(s) with contradictory stands.

9. Mr. T. Gyatso, learned Standing Counsel, Horticulture Department, for the respondent Nos. 1, 2 & 3, submits that although the respondent Nos. 2 & 3 by filing their respective affidavit(s) have taken a contradictory stand, the fact remains that the appointing authority is the Director of Horticulture and the respondent No. 3, who is the District Horticulture Officer is not an authority competent to appoint. He refers to the Notification dated 25.01.1989 to show that the appointing authority of Group 'C' & 'D' post is the Head of the Department at the relevant point of time. Therefore, the appointment of the respondent No. 4 is legal and the appointment of the petitioner being by an authority not competent, cannot be allowed. However, he submits that since the appointment order of the petitioner has not been cancelled or withdrawn and the petitioner having been continued by virtue of his appointment dated 23.11.2017, issued by the District Horticulture Officer, no fault could be attributed to the petitioner and therefore, he may be entitled for his arrear monthly wages.

10. I have considered the submissions of the learned counsel for the parties and also perused the documents placed on record.

11. Perusal of the Notification dated 25.01.1989, which pertains to the adaptation of laws and order in the State of Arunachal Pradesh, goes to show that the appointing authority for all Group 'C' & 'D' services in the post at the relevant point of time was Head of the Department/Office concerned not below

the Group 'A'. The appointments of both the petitioner and the respondent No. 4 were issued on the same month, within a span of 6(six) days vide dated 23.11.2017 & 29.11.2017, by 2(two) different authorities, namely, the District Horticulture Officer and the Director of Horticulture. Admittedly, the Head of the Department is the Director in the Department of Horticulture. Thus, the appointment authority would be the Director of the Horticulture Department and as such, the appointment made to the respondent No. 4 is more acceptable.

12. That apart, the petitioner could not place on record any rules/notification to show that the post in question falls within the District Office and the appointing authority to that effect is the District Horticulture Officer.

13. It is noticed that the District Horticulture Officer who has appointed the petitioner vide his communication dated 30.08.2019, to the Director of Horticulture, Itanagar has requested the Director to allow continuation of the petitioner as skilled contingency in the establishment of District Horticulture Office, Pasighat, by narrating how the petitioner came to be appointed.

14. As noted herein above, both the authorities particularly, the respondent Nos. 2 & 3 have filed separate affidavit(s) with a contradictory stand so as to justify their action of appointing both the petitioner and the respondent No. 4. It is obvious that one would like to justify their action even if it is unjustified. The justification for continuation of the petitioner by the District Horticulture Officer cannot be accepted as the appointing authority of such Group 'D' post is the Director of Horticulture. The respondent No. 4 having been appointed by the competent authority i.e., is the Director of Horticulture and is continuing in the

service, the justification by the District Horticulture Officer, not being a competent authority, cannot be accepted.

15. Having considered above, I am of the view that no relief can be granted to the petitioner to allow him to continue as skilled contingency worker pursuant to the appointment order dated 23.11.2017, by the District Horticulture Officer, East Siang District, Pasighat. However, having found that no fault could be attributed to the petitioner although his appointment is not by the competent authority, the petitioner is entitled to the monthly wages for the period which he has rendered, pursuant to the appointment order dated 23.11.2017.

16. Resultantly, without interfering with the engagement of the respondent No. 4, the respondent authorities are directed to release the arrear monthly wages of the petitioner for the period which he has rendered.

17. Having considered the peculiar facts of this present case and considering the contradictory stands taken by both the District Horticulture Officer and the Director of Horticulture by way of separate affidavit(s), this Court finds it fit to impose a cost of Rs. 50,000/- (Rupees Fifty thousand) only to be paid by both the officers i.e. the respondent Nos. 2 & 3 to the petitioner. The arrear monthly wages of the petitioner and the cost imposed herein above with equal proportion by both the Officers, shall be paid within 2(two) months from today.

18. The writ petition stands disposed of in terms above.

JUDGE

Comparing Assistant