

GAHC040009052023

2024:GAU-AP:1111



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

Case No. : WP(C)/318/2023

Papi Tana
D/o Late Panyo Tana,
Presently working in the Directorate of Economic and Statistics, Govt. of AP,
Itanagar.

VERSUS

THE STATE OF AP and 3 Ors.
Represented by the Secretary, Economic and Statistics, Govt. of AP, Itanagar.

2:the Director
Age: 0
Occupation :
Directorate of Economic and Statistics
Govt. of AP
Itanagar.

3:Byabang Anu
Age: 0
Occupation :
C/o Directorate of Economic and Statistics
Govt. of AP
Itanagar.

4:Mekam Sangdo
Age: 0
Occupation :
C/o Directorate of Economic and Statistics
Govt. of AP
Itanagar

Advocate for the Petitioner : T T Tara, Kirmani Lollen,Y Mugli,Riya Sarkar,Terji Kamchi,Khoda

Apa, Gamken Bam

Advocate for the Respondent : GA (AP), L Asha, Taja Garam, Byabang Ganga, Gimi Tarak

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR
JUDGMENT

Date of hearing : 04.12.2024

Date of Judgement : 11.12.2024

JUDGMENT & ORDER (CAV)

Heard Mr. T. T. Tara, learned counsel for the petitioner. Also heard Ms. R. Basar, learned Government Advocate for the State respondent Nos. 1 & 2 and Mr. G. Tarak, learned counsel for the respondent Nos. 3 & 4.

2. The petitioner by way of instituting the present proceedings has challenged the provisional seniority list, dated 08.09.2021, of the Unskilled Contingency Staff engaged in the establishment of the Director, Economics and Statistics, Government of Arunachal Pradesh. The petitioner has also assailed the final seniority list, dated 07.06.2023, of the unskilled contingency staff working in the establishment of the Director, Economics and Statistics, Government of Arunachal Pradesh, Itanagar to the extent that the seniority position of the petitioner was depressed therein and she came to be placed below her juniors i.e. the respondent Nos. 3 & 4 herein.

3. As projected in the writ petition, the petitioner was initially appointed as an

unskilled contingency staff, vide an order dated 03.09.2008, issued by the Director, Economics and Statistics, Government of Arunachal Pradesh. The petitioner on her such appointment was attached with the District Statistical Officer, Ziro, Lower Subansiri District, Arunachal Pradesh. The petitioner on receipt of the said order of appointment proceeded to join her services by submission of a joining report on 06.10.2008 before the District Statistical Officer, Ziro.

4. It is contended that the petitioner basing on a request made by her, she came to be transferred and posted to the establishment of the Director, Economics and Statistics, Government of Arunachal Pradesh, Itanagar until further orders, vide order dated 25.04.2012, issued by the Director, Economics and Statistics, Government of Arunachal Pradesh, Itanagar. The petitioner joined the establishment of the Directorate on 07.05.2012 and thereafter has been continuing to discharge her duties therein.

5. Vide communication, dated 20.03.2018, a provisional seniority list in respect of unskilled contingency staff under the establishment of the Director, Economics and Statistics, Government of Arunachal Pradesh, Itanagar was circulated and therein, the name of the petitioner herein was placed at serial No. 1 while the respondent Nos. 3 & 4 were so placed at serial No. 2 & 3. At this stage it is to be noted that the respondent Nos. 3 & 4 were so appointed as unskilled contingency workers in the Directorate on 24.03.2011 and 02.05.2012 respectively. The said provisional seniority list as circulated vide the communication, dated 20.03.2018, was not finalized and the respondent authorities proceeded to issue a fresh provisional seniority list vide communication, dated 08.09.2021, for the Directorate and therein, the name of

the petitioner was placed at serial No. 3, below the respondent Nos. 3 & 4. Being aggrieved, the petitioner submitted her objection to her placement in the said provisional seniority list by submitting a representation, dated 22.09.2021.

6. The respondent authorities after considering the claims and objections so received in the matter, in pursuance to the circulation of the provisional seniority list vide the communication, dated 08.09.2021, proceeded to finalise the same and vide the communication, dated 07.06.2023, the seniority list of the unskilled contingency staff under the establishment of the Director, Economics and Statistics, Government of Arunachal Pradesh, Itanagar was so finalized. In the final seniority list as circulated vide the communication, dated 07.06.2023, the petitioner was placed at serial No. 3 whereas the respondent Nos. 3 & 4 were so placed at serial No. 1 & 2 respectively.

7. Being aggrieved, the petitioner has instituted the present proceedings.

8. Mr. T. T. Tara, learned counsel for the petitioner after having made his elaborate submissions in the matter, both on the questions of law as well as on facts, had submitted that the assignment of the seniority position in respect of the petitioner in the provisional seniority list as circulated vide the communication, dated 08.09.2021, below that of the respondent Nos. 3 & 4, was so made without assigning any reason for the purpose inasmuch as, by reckoning the dates of initial engagement, the petitioner is admittedly senior to the respondent Nos. 2 & 3, and this was rightly reflected in the earlier provisional seniority list so circulated vide the communicated, dated 20.03.2018, wherein the petitioner herein was placed above the respondent Nos. 3 & 4

9. Mr. Tara, learned counsel for the petitioner further submitted in spite of the objections being raised in the matter by the petitioner, the respondent authorities failed to take into consideration the same and finalised the seniority list of unskilled contingency staff in the Directorate and vide communication, dated 07.06.2023, circulated the final seniority list wherein the petitioner was again placed below the respondent Nos. 3 & 4.

10. Mr. Tara had further submitted that the petitioner having been appointed in the Directorate vide the order, dated 03.10.2008, her attachment to the establishment of the District Statistical Officer, Ziro, would be of no consequence and the petitioner for all intent and purpose has to be construed to be an employee of the Directorate all along and accordingly, on her transfer and posting to the Directorate, vide the order dated 25.04.2012, the seniority of the petitioner in the Directorate has to be so construed with effect from the date of her initial joining in pursuance to the order, dated 03.09.2008, w.e.f. 06.10.2008, for the purpose of assigning to her seniority position amongst the unskilled contingency staff working in the Directorate.

11. Mr. Tara has further submitted that the respondent Nos. 3 & 4 were so recruited in the Directorate only in the year 2011 and 2012 respectively and, admittedly, they are much junior to the petitioner herein by reckoning the date of their initial engagement. In the above premises, Mr. Tara, learned counsel has submitted that the final seniority list circulated vide communication, dated 07.06.2023, and the provisional seniority list so circulated vide the communication, dated 08.09.2021, would call for an interference by this Court, with further direction to the respondent authorities to prepare the seniority list of unskilled contingency staff in the Directorate strictly by reckoning their dates

of initial engagement.

12. Ms. R. Basar, learned Government Advocate appearing for the respondent Nos. 1 & 2, by referring to the affidavit filed in the matter, at the outset, has submitted that there is no practice of maintaining an amalgamated seniority list of unskilled contingency staff working in the Directorate and in the various District offices. It is submitted that the seniority list of unskilled staffs is so prepared establishment wise. It was further submitted that the then Director, Economics and Statistics while engaging the petitioner as a unskilled contingency staff vide communication, dated 03.09.2008, could not have attached her services with the District Statistical Officer, Ziro, inasmuch as, there were clear Government instructions issued vide WT Message, dated 30.06.2007, wherein it was stipulated that in so far as the District Establishments are concerned, it would be the head of Office of such District establishments who would be the controlling and appointing authority of Group-C staff and in the Directorate, it would be the Director.

13. Ms. Basar further submitted that the attachment of the petitioner with the office of the District Statistical Officer, Ziro so made vide the order, dated 03.09.2008, was clearly beyond the powers so available with the Director at the relevant point of time. It has been further submitted that the petitioner joined her services not in the Directorate but in the office of the District Statistical Officer, Ziro on 06.10.2008. It is further submitted that petitioner basing on her request, made by her, came to be transferred and posted to the Directorate vide order, dated 25.04.2012. It is submitted that such transfer and posting was not permissible. It was further contended that the petitioner had joined the Directorate on her transfer thereto in terms of the order, dated 25.04.2012 only

on 07.05.2012 and accordingly, she has been included as an unskilled contingency staff and paid her remuneration in the Directorate only from 07.05.2012.

14. It is submitted that on account of clerical error occasioning in the matter, in the provisional seniority list as circulated vide the communication dated 20.03.2018, the name of the petitioner herein came to be placed at serial No. 1 and her such service was so reckoned with effect from the date of her initial joining i.e. 06.10.2008. It contended that the said seniority list being so prepared for the Directorate, the placement of the person included in the said select list could have been so made only by reckoning their respective continuous service in the Directorate. It is submitted that the position was rectified and a fresh provisional seniority list came to be so circulated vide communication, dated 08.09.2021 and, therein, by reckoning the services of the petitioner rendered in the Directorate, she came to be placed at serial No. 3 therein, below the respondent Nos. 3 & 4 who had a longer tenure in the Directorate then the petitioner herein.

15. In the above premises, it is submitted by the learned Government Advocate, Ms. R. Basar, that the provisional seniority list as well as the final seniority list of the unskilled contingency staff in the Directorate would not call for any interference.

16. Mr. G. Tarak, learned counsel appearing for the respondent Nos. 3 & 4 has adopted the arguments made by the learned Government Advocate, Ms R. Basar. Mr. Tarak has further submitted the respondent Nos. 3 & 4 were engaged and posted in the Directorate itself. It is further submitted that on receipt of the

provisional seniority list as circulated vide the communication, dated 20.03.2018, the respondent No. 3 had submitted objection in the matter and the same was duly considered by the authorities and thereafter, the respondent authorities had circulated a fresh provisional seniority list vide communication, dated 08.09.2021 and, therein, assigned the seniority positions to the unskilled contingency staff working in the Directorate, including the petitioner, the respondent Nos. 3 & 4 by reckoning their length of continuous service in the Directorate.

17. In the above premises, Mr. Tarak has submitted that the final seniority list as circulated vide communication, dated 07.06.2023, would not call for any interference by this Court.

18. I have heard the learned counsel appearing for the parties and also perused the materials available on record.

19. It is an admitted position that the petitioner herein was recruited vide an order, dated 03.09.2008, while the respondent Nos. 3 & 4 were so recruited subsequently vide the orders, dated 23.03.2011 and 02.05.2012 respectively. Although going by the dates of their respective initial engagement, the petitioner is senior to the respondent Nos. 3 & 4, however, while the respondent Nos. 3 & 4 were so engaged as unskilled contingency staff in the Directorate, the petitioner herein although appointed by the Director of Economics & Statistics, as an unskilled contingency staff vide the order, dated 03.09.2008, she was not so appointed in the Directorate but was, on her appointment, attached with the Office of the District Statistical Officer, Ziro.

20. It is seen from the record that the petitioner at no point of time in pursuance to the order, dated 03.09.2008, had joined in the Directorate and she had directly joined before the District Statistical Officer, Ziro by way of submitting the joining report on 06.10.2008. The petitioner continued to serve under the establishment of District Statistical Officer, Ziro thereafter. The petitioner had submitted a request for her transfer to the Directorate and accordingly, basing on her such request, the petitioner was transferred and posted as unskilled contingency staff to the establishment of the Director, Economics & Statistics vide the order, dated 25.04.2012, until further orders. The petitioner, accordingly, joined the services of the Directorate for the first time on 07.05.2012.

21. The respondents have brought on record a WT Massage, dated 30.06.2007, wherein, the cadre controlling authority as well as the appointing authority of the Group-C staff in the District establishments were specified and accordingly, the office of the District Statistical Officer falling under the Deputy Commissioner's establishment, it was contended that the unskilled contingency staff for the establishment of District Statistical Officer, Ziro could have been appointed only by the Deputy Commissioner, Ziro. It is contended that the Director, Economics and Statistical in engaging the petitioner herein for the purpose of the works in the office of the District Statistical Officer, Ziro had clearly exceeded the jurisdiction vested in him.

22. It is seen that the petitioner herein had, thereafter, submitted a request of transfer and accordingly, basing on such request, she was transferred to the establishment of Director, Economics & Statistics vide order, dated 25.04.2012. The petitioner joined in the Directorate on 07.05.2012 and thereafter, has been

continuing her service therein till date.

23. The respondents in their affidavits have made a categorical statement to the effect that it is the practice followed that there is separate seniority list maintained for each of the District establishments and for the Directorate. The said practice is also stated to have been followed for unskilled contingency staff. The contention so made by the respondents in their respective affidavits have not been disputed by the petitioner by way of filing affidavit-in-reply thereto.

24. The above discussions would go to show that the service required to be so reckoned for the purpose of assignment of seniority of an unskilled contingency workers would be the service so rendered by the unskilled contingency workers in the establishment, wherein, he/she is so working on the date of preparation of such seniority list. The respondents had categorically contended in their affidavit that there is no practice of preparation of an amalgamated seniority list of unskilled contingency workers working in the Directorate and the various District Offices, the said contention was not disputed by the petitioner herein. Accordingly, the petitioner, in the facts and circumstances, involved, would not be entitled to reckon the period of service rendered by her in the establishment of the District Statistical Officer, Ziro, for the purpose of fixation of his seniority in the Directorate.

25. In view of the above settled position with regard to preparation of the seniority list pertaining to the contingency staff and the same being so mandated to be prepared by reckoning the services rendered by such unskilled contingency staff in the establishment concerned, the petitioner having joined the establishment of the Directorate only w.e.f. 07.05.2012, this Court is of the

considered view that the assignment of seniority to her both in the provisional seniority list circulated vide communication dated 08.09.2021 and that so assigned to her in the final seniority list circulated vide the communication dated 07.06.2023, reckoning the continuous service rendered by her in the Directorate, would not call for any interference. More so, when the respondent Nos. 3 & 4, admittedly, have a longer tenure of service in the Directorate then that of the petitioner herein.

26. At this stage, the submission of Mr. T. T. Tara that the petitioner having been initially engaged by the Director, Economics & Statistics and only attached with the District Statistical Officer, Ziro, she must be reckoned to be a staff of the Directorate for all intent and purpose, including assignment of seniority to her amongst the unskilled contingency staff of the Directorate, is being considered. The said contention of the learned counsel for the petitioner is considered only to be rejected, inasmuch as, it has not been brought on record that the petitioner had in pursuance to her initial order of engagement, dated 03.09.2008, joined the services of the Directorate initially and thereafter, was, on attachment, transferred to the establishment of the District Statistical Officer, Ziro.

27. Further, considering the stand of the State respondent that it was not permissible for the Director, Economics & Statistics to effect appointments in the District offices, even in respect of unskilled contingency staff, the petitioner has to be reckoned to be a unskilled contingency staff working in the establishment of the District Statistical Officer w.e.f. 06.10.2008 till 06.05.2012. The petitioner having joined the Directorate as an unskilled contingency staff only on her transfer thereto, which again is questioned, on 07.05.2012, the petitioner would

not be entitled to reckon the services so rendered by her in the establishment of District Statistical Officer, Ziro for the purpose of assignment of seniority to her in the Directorate.

28. In view of the above discussions and the conclusion reached, this Court is of the considered view that the provisional seniority list circulated vide the communication dated 08.09.2021 as well as the final seniority list circulated vide the communication dated 07.06.2023 of the unskilled contingency staff working in the Director, Economics & Statistics, Government of Arunachal Pradesh, assailed in the present proceedings, would not call for any interference. Consequently, the said seniority lists are upheld.

29. Accordingly, the writ petition is held to be devoid of any merit and the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant