

GAHC040010722024



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

Case No. : IA(C)/137/2024

Dollo Pura and 3 Ors
Son of Shri Pura Tamu, resident of Village Hija, PO and PS Zero, Lower Subansiri
District, Arunachal Pradesh 2: Jobom Bam

Age:

Occupation :

Son of Shri Tope Bam
resident of Naharlagun
opposite Rajdhani Petrol Pump
PO and PS Naharlagun
Papumpare District
Arunachal Pradesh

3: Donya Lollen

Age:

Occupation :

Son of Late Bindo Lollen
resident of Village Kombo
PO and PS Aalo
West Siang District
Arunachal Pradesh

4: Oni Ejing

Age:

Occupation :

Son of T Ejing
resident of Geku village
PO and PS Geku
Upper Siang District
Arunachal Pradesh

VERSUS

Tomin Ete and 3 Ors

Son of Late T Ete, resident of Village Vivek Vihar, PO and PS Itanagar, Papumpare District, Arunachal Pradesh 2:Vijay Passing

Age: 0

Occupation :

Son of Ano Passing
resident of Village Parbuk
PO and PS Roing
Lower Dibang Valley District
Arunachal Pradesh

3:Sawimso Tayeng

Age: 0

Occupation :

Son of Late Tuku Tayeng
resident of Rangan Village
PO Hayuliang
PS Khupa
Anjaw District
Arunachal Pradesh

4:The State of Arunachal Pradesh

Age: 0

Occupation :

represented by the Commissioner/ Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Arunachal Pradesh
Itanaga

Advocate for the Petitioner : Tapi Omo,

Advocate for the Respondent : Nikita Danggen,

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18.09.2024

Heard Mr. D. Mozumder, learned senior counsel, assisted by Mr. B. Kaushik, learned counsel for the applicants. Also heard Ms. N. Danggen, learned counsel for the opposite party nos. 1, 2 and 3, and Mr. R.H. Nabam, learned

Addl. Advocate General, assisted by Ms. P. Pangu, learned Govt. Advocate for respondent no.4.

2. The applicants herein are the respondent nos. 2 to 5 in the connected W.P.(C) No.295(AP)/2024 and the said writ petition was filed by the opposite party nos. 1 to 3 in this application. The proforma opposite party no.2 in this application has been arrayed as the respondent no.1 in the said writ petition.

3. By filing this interlocutory application under Article 226(3) of the Constitution of India the applicants have prayed for vacating/modifying and/or for not extending the *ex parte* interim order dated 31.07.2024, passed in connection with the connected W.P.(C) No. 295(AP)/2024. It would be pertinent to mention that by the said order dated 31.07.2024, while issuing notice, this Court had found it fit to direct that the State-respondents may not conduct DPC with respect to the promotion from the post of Assistant Engineer (C) to Executive Engineer (C) based on the impugned seniority list dated 29.07.2022 till the next returnable date.

4. It may also be stated that this interlocutory application was filed on 21.08.2024 and accordingly, the same was listed on 22.08.2024 and by order dated 22.08.2024, the interim order passed earlier was extended till the next date of listing.

5. It is submitted at the Bar that the opposite party nos. 1, 2 and 3 had also filed WP(C) 14(AP)/2022 being aggrieved by regularization of their promotion to the post of Assistant Engineer (C) in the Department of Hydro Power Development w.e.f. 31.10.2019, the date of DPC meeting instead of date of their officiating promotion to the said post. The said opposite parties claimed

their entitlement for promotion to be made effective from the year 2005 and 2007 respectively.

6. The Court has considered the submissions made at the Bar by the learned senior counsel for the applicants, the learned counsel for the opposite party nos. 1 to 3 and the learned Addl. Advocate General for the State. Also considered the pleadings and materials available on record.

7. The learned senior counsel for the applicants by referring to the copy of DPC minutes dated 24.07.2012, annexed to this interlocutory application has been able to demonstrate that by the said DPC minutes dated 24.07.2012, recommendation was made for regularization of officiating promotion given to 20 officers in the grade of Junior Engineer (C) to the post of Assistant Engineer (C) with effect from the date shown against their each name. The last two recommended officers vide said DPC minutes dated 24.07.2012 are sl. No. 19, Sri Yimi Angu, whose date of promotion/ regularization was shown as 21.05.2005 and the last officers at sl. No.20 is Sri Ama Paloh, whose date of promotion/ regularization was shown as 31.08.2005.

8. This Court vide judgment and order dated 26.10.2021, passed in WP(C) 66(AP)/2013 arrived at a conclusion that the aforesaid Sri Yimi Angu and Sri Ama Paloh, who had been arrayed as respondent nos. 6 and 7 in the said writ petition were recommended by the DPC in excess of the quota for promotion as per the Recruitments Rules of 1991 as well as 2005. The relevant paragraphs 12 to 15 of the said judgment and order dated 26.10.2021, passed in WP(C) 66(AP)/2013 are quoted below:

“12) No document has been produced by the State respondents regarding the nature of reference which was made to the DPC and moreover, no document has been brought on record by the State respondents to show the cadre strength of

AE(C) in the DoHPD as on 21.05.2005 & 31.08.2005, the date on and from which the officiating promotion to respondent nos. 6 & 7 were regularized. Therefore, the only material available before this Court is the affidavit-in-opposition filed by the State respondents in connection with WP(C)543(AP)/2005 which was filed on 11.11.2005, wherein it has been stated specifically that as on the said date, the sanctioned strength of AE(C) under DoHPD was 31 (thirty-one) and that the vacancy position in the year 2005 was only 11 (eleven). As indicated above, the said fact is also reproduced in the judgment and order dated 17.01.2006, passed in WP(C)543(AP)/2005. Therefore, the inevitable conclusion of the Court is to the effect that the recommendation made by the DPC held on 24.07.2012 had failed to consider the relevant recruitment rules in force while recommending regularization of officiating promotion given to the respondent nos. 6 & 7 from 21.05.2005 & 31.08.2005 respectively. In view of the challenge made only to the regularization of officiating promotion given to the respondent nos. 6 & 7, the Court is of the considered opinion that the promotions of respondent nos. 6 & 7 were recommended by the DPC in excess of the quota for promotion as per the Recruitment Rules of 1991 as well as 2005.

13) Resultantly, in view of the observation made by the Hon'ble Supreme Court of India in the case of Keshav Chandra Joshi (supra), promotions of respondent nos. 6 & 7, made in excess of promotional quota without adherence to the ratio of 50:50 for direct recruitment and promotional quota, in the opinion of the Court, the respondent nos. 6 & 7 would have to be treated as if on officiating/ad hoc promotion and they would become entitled for regularization of their promotion with effect from such dates on which the appropriate promotional quota becomes available for being filled up by the respondent nos. 6 & 7. In the present case in hand, notwithstanding the projection that the respondent nos. 6 & 7 had become qualified in the year 2002 for being considered for promotion, but as quota for promotional post of AE(C) was not available, their claim can only be considered on and from the date on which the promotional quota becomes available for the regularisation of promotion of the respondent nos. 6 & 7.

14) In the case of Direct Recruit Class II Engineering Officer's Association (supra), it has been observed by the Supreme Court of India that where appointment was only ad hoc and made as a stop gap arrangement and in accordance to the rules, the officiation in such posts cannot be taken into account for considering the seniority.

15) In view of the discussions above, the writ petition succeeds and accordingly the writ petition stands allowed. Resultantly, the recommendation of the DPC, i.e. Departmental Promotion Committee, held on 24.07.2012 is set aside in so far as it concerns the recommendations made for regularization of officiating promotion made to respondent nos. 6 & 7 from 21.05.2005 & 31.08.2005 respectively, without effecting any other recommendations made thereunder and consequently it would be open to the State respondents to prepare a fresh seniority list of AE(C) in the Department of DoHPD."

9. Therefore, in light of the observations made in the order passed in WP(C) 66(AP)/2013 and taking note of the DPC minutes dated 24.07.2012, which is annexed to this interlocutory application, the inevitable impression of the Court is that in the connected writ petition i.e. WP(C) 295(AP)/2024, the opposite party nos. 1 to 3 have suppressed the said DPC minutes dated 24.07.2012.

10. It is not in dispute that the applicants herein were selected and recommended by the APPSC and accordingly, by an order dated 24.08.2009, the Govt. of Arunachal Pradesh through Department of Hydro Power Development had appointed the four applicants herein as Assistant Engineer (C) in the said department.

11. It is needles to mention that as the said DPC minutes has neither been annexed by the opposite party nos. 1 to 3 either in WP(C) 14(AP)/2022 or in WP(C) 295(AP)/ 2024.

12. The applicants herein are all direct recruitees to the post of Assistant Engineer (C). From the judgment passed in WP(C) 66(AP)/2013, it appears that out of 20 recommendations made by the DPC, two recommendations were held to be in excess. All the remaining 18 Junior Engineers (C), therefore, got promoted to the Assistant Engineer (C). There is nothing on record to show that the petitioners had challenged the DPC minutes dated 24.07.2012 or any other orders of promotions which was issued by the competent Authority for the 18 other recommended officers.

13. The applicants as well as the opposite party nos. 1 to 3 have annexed a copy of provisional inter-se seniority list of the Assistant Engineer (C) under the Department of Hydro Power Development. On a perusal of the said provisional seniority list, it is seen that the persons whose names appears at sl. No. 1 to 11 are the then Junior Engineers (C) who had promoted to the post of Assistant Engineer (C) pursuant to DPC minutes dated 24.07.2012 and that the persons whose names appear at sl. No. 12 to 25 are direct recruits. Amongst those persons, the names of the four applicants herein appear at sl. No. 22 to 25. The name of Yimi Angu, who was respondent no.6 in WP(C) 66(AP)/2013 appears at sl. No. 26.

14. After examining the claims and objections, by a Memorandum dated 29.07.2022, which is impugned in this writ petition, final seniority list as on 31.07.2022 was notified. In the said final seniority list, the position of sl. No. 1 to 11 of the provisional seniority list remains the same at sl. No. 1 to 11. The name of Sri Yimi Angu, who was earlier at sl. No. 26 now appears at sl. No. 12 and the names of the direct recruits appeared at sl. No. 13 to 25. Accordingly, the names of the applicants now appear at sl. No. 23 to 26 respectively.

15. As per the provisional senior list as on 31.03.2022, the names of

the opposite party nos. 1 to 3 appears at sl. No. 44, 45 and 48 respectively and even in the final seniority list, the names of opposite party nos. 1 to 3, appear at same sl. No. 44, 45 and 48 respectively.

16. Therefore, in this case the DPC minutes dated 24.07.2012 and the resultant seniority in the cadre of Assistant Engineer (C), after the Government had acted upon the DPC minutes dated 24.07.2012, has not been assailed. Moreover, the applicants are direct recruits who were appointed in the year 2009. The petitioners claim their right to promotion because they were granted officiating promotion to the next higher post of Assistant Engineer (C) from particular dates which are mentioned against their names. From the final seniority list as on 31.07.2022, it appears that the officers whose names appear at sl. No. 6 to 12 and 14 to 22 and 27 are also officiating as Executive Engineer (C). The date of officiating promotion range from 09.03.2007 to 28.09.2018.

17. In the case of *Shiv Dass vs. Union of India*, (2007) 9 SCC 274, the Supreme Court of India has observed to the effect that the High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. Moreover, it was also observed to the effect that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction. It was also observed to the effect that if petition is filed beyond a reasonable period say three years, normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

18. The Supreme Court of India, in the case of *Union of India Vs. Tarsem Singh, (2008) 8 SCC 648*, has deprecated a belated service related claim and has opined to the effect that such a claim should be rejected on the ground of delay and laches where remedy is sought by filing a writ petition. However, an exception was carved out that if a belated claim is based on a continuing wrong. But again it was observed that there is an exception to the exception and if the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained.

19. Accordingly, in light of the discussion above, the Court is of the considered opinion that the stay order granted vide order dated 31.07.2024, directing the State respondents not to conduct DPC with respect to the promotion from the post of Assistant Engineer (C) to the next higher post of Executive Engineer (C) based on seniority list dated 29.07.2022 is required to be vacated as the position of the petitioners, being direct recruits of the year 2009, ought not to be allowed to stagnate without any further DPC as it is seen from the final gradation list that except for the applicants, who are direct recruits of 2009, all other promotees of DPC dated 24.07.2012 and all the direct recruits appointed in the year 2006 are holding the higher post of Executive Engineer (C) on officiating basis. Therefore, this is a case where the stay is likely to cause hardship to the applicants.

20. Resultantly, the interim order dated 31.07.2024, passed in connection with the connected W.P.(C) No. 295(AP)/2024 stands vacated. However, it is provided that any promotion made upon any subsequent DPC recommendation, during the pendency of the connected W.P.(C) No.

295(AP)/2024, has to be made subject to any further order(s) that may be passed in W.P.(C) No. 295(AP)/2024.

21. This interlocutory application stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant