



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

Case No. : WP(C)/525/2018

ANITA FLAGO
C/O RAYA FLAGO RANGE FOREST OFFICER ZOOLOGICAL PARK, PO/PS
ITANAGAR, DIST. PAPUM PARE, AP. MOBILE NO. 9436072322

2: SHRI BIDA YANGFO

Age:

Occupation :

S/O NIYA YANGFO RESIDING AT NEAR GREEN MOUNT SCHOOL
ITANAGAR FNE COLONY PO RK MISSION PO ITANAGAR DIST. PAPUM
PARE AP.

3: SHRI PHASSANG BONGHI

Age:

Occupation :

S/O PHASSANG TALUK RESIDENT OF BANDERDEWA DIST. PAPUM PARE
AP

VERSUS

THE STATE OF A.P. REPRESENTED BY THE SECRETARY, TOWN PLANNING
AND URBAN LOCAL BODY TP and ULB, GOVT. OF AP, ITANAGAR.

2: THE ITANAGAR MUNICIPAL COUNCIL IMC

Age: 0

Occupation :

REPRESENTED BY ITS ADMINISTRATOR IMC NAHARLAGUN AP.

3: THE DEPUTY COMMISSIONER

Age: 0

Occupation :

CAPITAL COMPLEX CUM ADMINISTRATOR ITANAGAR MUNICIPAL

COUNCIL IMC NAHARLAGUN AP.

4:SHRI OLIK TARING EX CHIEF EXECUTIVE MUNICIPAL OFFICER

Age: 0

Occupation :

ITANAGAR MUNICIPAL COUNCIL IMC NAHARLAGUN AP.

5:SMTI KIPA KAKU

Age: 0

Occupation :

EX CHIEF COUNCILLOR ITANAGAR MUNICIPAL COUNCIL IMC
NAHARLAGUN AP

Advocate for the Petitioners : N Danggen, O Duggong, O. Perme, T. Tatak, D. Taggu.

Advocate for the Respondents : Mr. T. Jamoh, S/C, IMC; Ms. P. Pangu, GA

Linked Case : WP(C)/518/2018

ER. CHARU BAI

Age: 0

Occupation :

Address:S/O CHARU TAYU

C/O BIKI YAKAP

NEAR GOVT. SECONDARY SCHOOL P SECTOR

ITANAGAR

PO/PS ITANAGAR

DIST. PAPUM PARE

A P. MOBILE NO. 9402997931

2: ER. BHARAT CHEDA

Age: 0

Occupation :

Address:S/O BOLU CHEDA

C/O MRS. PARWA WELLY

CHIMPU-I

PO RK MISSION

PS ITANAGAR

AP.

3: ER. DOLYANG LUCKY

Age: 0

Occupation :

Address:S/O DOYANG BHARAT

PRESENTLY RESIDING AT NEAR POWER HOUSE

DOIMUKH

PO/PS DOIMUKH

DIST. PAPUM PARE AP. PERMANENT RESIDENT OF VILLAGE OLD PALIN
LUMBA

PO/PS NEW PALIN

DIST. KRA DAADI

AP.

4: ER. HAGE BUDA

Age: 0

Occupation :

Address:S/O HAGE TAKUNG

PRESENTLY RESIDING AT MOWB-II

PANCHALI

NEAR BOOSTRE PUMP HOUSE

ITANAGAR PO/PS ITANAGAR DIST. PAPUM PARE

AP.

5: DR. DOLANG JOHN

Age: 0

Occupation :

Address:S/O LT. DOLANG TAYU

VILLAGE PACHIN COLONY

PO/PS NAHARLAGUN

DIST. PAPUM PARE

AP. PHONE NO. 9402042911

6: ER. PATE RUJA

Age: 0

Occupation :

Address:S/O LT. PALE SALSA

PRESETNLY RESIDING AT DOI KILO

PAPU NALLAH

NAHARLAGUN

DIST. PAPUM PARE

AP.

7: ER. DARE KAGUNG

Age: 0

Occupation :

Address:S/O DARE

S/O DARE JOHA

PRESENTLY RESIDING AT SANKI PARK
ITANAGAR
PO/PS ITANAGAR
DIST. PAPUM PARE
AP.

8: ER. BOLO BAGANG
Age: 0
Occupation :
Address:S/O TACHANG BAGANG
PRESENTLY RESIDING AT CHANDRANAGAR
NEAR PHQ
ITANAGAR
PO/PS ITANAGAR DIST. PAPUM PARE
AP.

9: ER. TAKAM JOHNY
Age: 0
Occupation :
Address:S/O TAKAM HANU
C/O TARH SIKKI TB BLOCK -03
NEAR POWER HOUSE
C SECTOR ITANAGAR
PO/PS ITANAGAR
AP.

10: ER. TANA JOHN
Age: 0
Occupation :
Address:S/O TANA RANKA
PRESENTLY RESIDING AT SRPL COLONY WARD NO. 03
CHANDRANAGAR
PO RK MISSION
PS ITANGAR
DIST. PAPUM PARE
AP.

11: JANANG TAJO
Age: 0
Occupation :
Address:S/O LOGO TAJO
PERMANENT RESIDENT OF VILLAGE DOMDILA
DIST. EAST KAMENG
PO/PS CHAYANG TAJO
AP.

12: ER. MAGI TECHI
Age: 0
Occupation :
Address:S/O TECHI TASSING
RESIDING AT VILLAGE PAPU NALLAH
PO/PS NAHARLAGUN
DIST. PAPUM PARE
AP.

13: ER. SAPE
Age: 0
Occupation :
Address:S/O SHRI SAPE TANU
RESIDING AT SARLI
PO SARLI
PS KOLORIANG
DIST
KURUNG KUMEY
AP.

14: ER. TAI OPIN
Age: 0
Occupation :
Address:S/O LT. TAI EPO
RESIDING AT DONYI COLONY
JULLY ROAD
GANGA
ITANAGAR
PO RK MISSION
PS ITANAGAR DIST. PAPUM PARE
AP.

15: ER. NABAM KUKUM
Age: 0
Occupation :
Address:S/O SHRI NABAM NABAM
RESIDING AT PER LICH
PO/PS KIMIN
DIST. PAPUM PARE
AP.

VERSUS

THE STATE OF A.P.
Age: 0
Occupation :

Address:REPRESENTED BY THE SECRETARY
TOWN PLANNING AND URBAN LOCAL BODUTP and ULB
GOVT. OF AP
ITANAGAR.

2:THE ITANAGAR MUNICIPAL COUNCIL IMC

Age: 0

Occupation :

Address:REPRESENTED BY ITS ADMINISTRATOR
IMC
NAHARLAGUN
AP.

3:THE DEPUTY COMMISSIONER

Age: 0

Occupation :

Address:CAPITAL COMPLEX CUM ADMINISTRATOR
ITANAGAR MUNICIPAL COUNCIL IMC NAHARLAGUN
AP.

4:SHRI OLIK TARING EX CHIEF EXECUTIVE MUNICIPAL OFFICER

Age: 0

Occupation :

Address:ITANAGAR MUNICIPAL COUNCIL IMC NAHARLAGUN
AP.

5:SMTI KIPA KAKU

Age: 0

Occupation :

Address:EX CHIEF COUNCILLOR ITANAGAR MUNICIPAL COUNCIL IMC
NAHARLAGUN
AP.

Advocate for the Petitioners : N Danggen, O Duggong, O. Perme, T. Tatak,
D. Taggu.

Advocate for the Respondents : Mr. T. Jamoh, S/C, IMC; Ms. P. Pangu, GA

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

Date of judgment & order : 13.08.2024

JUDGMENT & ORDER

Heard Mr. O. Duggong, learned counsel for the petitioners. Also heard Ms. P. Pangu, learned Government Advocate for the respondent Nos. 1 to 3 and Mr. T. Jamoh, learned Standing counsel for the Itanagar Municipal Corporation.

2. Having regard to the similarity of the factual background and the issue raised, both the writ petitions are heard analogously and this adjudication would dispose of the same by this common judgment and order.

3. In both the writ petitions, the petitioners have put to challenge the impugned orders (through Newspaper publication) dated 25.06.2018, 27.06.2018 and also notice dated 10.08.2018, by which the services of the petitioners as Lower Division Clerk (LDC) and Municipal Junior Engineer (MJE), have been terminated, on the ground that no individual Show-cause notices were issued.

4. Brief facts giving rise to the present petitions are that the petitioners were appointed as Lower Division Clerks (LDC) and Municipal Junior Engineers (MJE) in the Itanagar Municipal Council, (now Itanagar Municipal Corporation) vide order dated 08.06.2018, pursuant to walk-in-interview held on 03.06.2018, 04.06.2018 and 05.06.2018. It is the contention of the petitioners that the walk-

in-interview was conducted pursuant to the advertisement dated 15.05.2018, issued by the Itanagar Municipal Council (IMC) and the same was published in local newspaper on 01.06.2018. After their appointments, petitioners were sent to undergo 3 (three) months training w.e.f. 01.08.2018 to 01.11.2018 at Kamrup Vocational Centre, Assam.

5. It is contended that the while the petitioners were undergoing training at Guwahati, they were informed by their relatives that some public notice has been issued through Newspapers publication, by the Deputy Commissioner, Itanagar, Capital Complex, to the effect that their appointments have been cancelled without citing any reasons.

6. The Deputy Commissioner-cum-Administrator, Itanagar Municipal Council, issued the impugned order dated 25.06.2018, which was published on 20.07.2018 in the Arunachal Times Newspaper, stating that the Chief Municipal Executive Officer (hereinafter referred as CMEO in short) Itanagar Municipal Council, has issued the appointment order of the petitioners without following due process and therefore, the appointments are nullified.

7. Thereafter, on 27.06.2018, another order was issued by the Deputy Commissioner-cum-Administrator Itanagar Municipal Council, which was published on 13.07.2018 in the Arunachal Times newspaper, cancelling the order of the CMEO, Itanagar Municipal Council, dated 15.05.2018, advertisement for walk-in-interview for the post of MJE/UDC/LDC/Mechanic/Assistant and the appointment orders issued to the petitioners pursuant to the said advertisement.

8. Vide order dated 10.08.2018, which was published on 15.08.2018 in the newspaper, notice was issued to the effect that in view of the order dated 25.06.2018 and 27.06.2018, whereby, the appointments of the petitioners were cancelled, the petitioners were advised not to take part in the training.

9. It is the contention of the petitioners that none of the impugned orders were ever served to the petitioners in person nor were any Show-cause notice issued to them.

10. Mr. O. Duggong, learned counsel for the petitioners, submits that no notice was given to petitioners before termination of their service. The petitioners were appointed pursuant to the interview conducted after the posts were duly published in the advertisement dated 15.05.2018.

11. Mr. O. Duggong, learned counsel submits that no foul play was ever attributed to the petitioners in their appointments. The petitioners have responded to the advertisement and appeared in the interview and accordingly, they were appointed. The reason for cancellation and termination of the appointment orders have been shown to be on the ground that the CMEO, Itanagar Municipal Council has no power to issue the advertisement and the appointment orders and there is no administrative approval for recruitment of such posts by way of interview. Therefore, no fault can be attributed to the petitioners.

12. Mr. O. Duggong, learned counsel, submits that the safeguard and requirement of compliance to the principle of natural justice is expressly

provided in the Rule 5 of CCS (Temporary) Rules, 1965. The Deputy Commissioner-cum-Administrator, has violated the above rule as no Show-cause notice was issued to the petitioners before termination of their services. That apart, the action of the respondent authorities impugned in the present petition is arbitrary, irrational, unfair and unreasonable and also violation of the right of the petitioners under Article 14, 16 and 311(2) of the Constitution of India. Therefore, he submits that the impugned orders are liable to be set aside and quashed.

13. On the other hand, Ms. P. Pangu, learned Government Advocate for the State respondents, submits that the Deputy Commissioner-cum-Administrator, Itanagar Municipal Council had come to know that appointment orders were issued to some persons without there being any approval from the competent authority that too allegedly on the basis of interview only, which is not only in violation of the provisions of *the Arunachal Pradesh Municipal Act, 2007*, but also the scheme of public employment. Therefore, the advertisement and the appointment orders of the petitioners have been cancelled by the Deputy Commissioner-cum-Administrator. There were no records available in the Office regarding the selection process alleged to have been conducted by the CMEO, Itanagar Municipal Council.

14. She submits that it is not necessary to issue Show-cause notice to the petitioners as the unauthorised advertisement and consequential illegal appointments by the Officer not authorised under the law and without any approval from the State Government, therefore is void. She submits that there were not only lapses but also illegalities on the part of the CMEO in appointment

of the petitioners. There was no vacancy of post in the Itanagar Municipal Corporation, when the petitioners were appointed. She submits that there was no sanctioned budget to pay the salaries and no prior approval of the State Government. Therefore, the cancellation of appointment of the petitioners, who were appointed on a non-existent vacancy and de hors the rules, cannot be said to be legal as the entire process of appointment was a nullity.

15. I have considered the submissions of the learned counsels for the parties and perused the materials available on record.

16. An advertisement was issued on 15.05.2018 by the CMEO, Itanagar Municipal Council, which was published on 01.06.2018, inviting candidates for walk -in- interview for various posts including the LDCs and MJE's. Pursuant thereto, walk-in-interview was purportedly conducted from 03.06.2018 to 05.06.2018. Thereafter, vide appointment orders dated 08.06.2018, the petitioners were appointed as LDCs and MJE's by the CMEO. The petitioners were directed to undergo training at Guwahati. Though, it is contended that petitioners were undergoing training when the impugned orders were issued terminating their services, there is nothing to show which fortifies their claim except some indication in the impugned notice published in the newspaper.

17. It transpires that the Deputy Commissioner-cum-Administrator, Itanagar Municipal Council, being an Administrator, on coming to know the said appointments of the petitioners, vide notice through paper publication in the Arunachal Times, dated 25.06.2018, stating that the Itanagar Municipal council is currently not able to meet its own liabilities like salaries etc., and any

appointment cannot be made by the Itanagar Municipal Council at its own level, as it amounts to post creation and is a drain out on Itanagar Municipal Council's own revenue sources and also the post creation has already been banned by the Government of Arunachal Pradesh, has notified that the orders of appointment dated 08.06.2018 issued by the CMEO, IMC, are a nullity.

18. Thereafter, vide an order dated 27.06.2018, published in the Arunachal Times, the Deputy Commissioner-cum-Administrator Itanagar Municipal Council stated to be in exercise of power under Rule 51 of *the Arunachal Pradesh Municipal Business Rules, 2015*, conferred to the Administrator, has declared that the advertisement dated 15.05.2018 stands cancelled and nullified and any appointments pursuant to the said advertisement also treated cancelled and nullified.

19. Vide public notice dated 10.08.2018, published in the Arunachal Times, the Deputy Commissioner-cum-Administrator Itanagar Municipal Council, has brought to notice that the appointment of candidates pursuant to the advertisement dated 15.05.2018, has been cancelled due to procedural lapses and other reasons referred in the earlier orders, thereby, declaring any training undertaken by the candidates to be void and advised not to take part in such illegal training.

20. On consideration of the above course of action undertaken by the Deputy Commissioner-cum-Administrator, would go to show that such course may not be permissible in normal circumstances. However, in my view, in the peculiar facts and circumstances of the present case there would not have been any

other option except to resort to such course as there was no record of the entire selection process including the appointment of the petitioners.

21. This Court, before the writ petitions were taken up for final hearing, had directed Mr. T. Jamoh, learned Standing counsel, Itanagar Municipal Corporation, to obtain instructions and produce the record, fixing the matters on 13.08.2024. Today, during the course of hearing, Mr. Jamoh, Standing Counsel, submits that the Itanagar Municipal Corporation does not have any record as the appointments were made during the then Itanagar Municipal Council before it was upgraded to the present Corporation.

22. It is noticed that the Deputy Commissioner-cum-Administrator Itanagar Municipal Council, on coming to know of such unauthorised advertisement and illegal selection process as well as appointments, had made an attempt to locate the relevant records/files relating to the said selection process, however, no records could be located. Thereafter, the impugned orders/notices were published in the newspaper, the course of action undertaken, in my view, cannot be faulted in the peculiar facts and circumstances of the present case as none was identified individually in the absence of record in the Office.

23. No doubt, an advertisement was shown to have been issued on 15.05.2018. Thereafter, the interview was purported to have been conducted for 3 (three) days, starting from 03.06.2018 to 05.06.2018 for all the posts, including all the candidates for appointment to various posts including the posts in question. However, nothing is discernible as to how the CMEO of the then Itanagar Municipal Council has authority to issue the advertisement for filling up

of various post in the Itanagar Municipal Council. Assuming that the CMEO was authorised, in such event also the posts ought to be filled up by way of selection process as per the scheme of public employment. Admittedly, there was no written examination. It also cast a huge shadow of doubt as to the wide publication for filling up of such huge number of posts for giving equal opportunity to all the eligible candidates.

24. On consideration of the above, apart from having no authority of the CMEO for initiating the selection process and on the categorical statement of the concerned respondent authorities that there were no vacancies or sanctioned posts and the process has been initiated by a person not competent and having no approval of the competent authority, the entire selection process, in my considered view, is illegal and cannot be sustained. Since the entire process is dehors the rules, the appointment orders purportedly issued pursuant to the said process is null and void. Thus, since the entire selection process was vitiated, question of notice of providing opportunity to the petitioners does not arise, more so, none of the petitioners were identified in absence of record.

25. When the selection process is vitiated, the appointment pursuant would be a nullity. Therefore, there is no requirement of observance of principle of natural justice, much less, following of Rule 5 of the CCS (Temporary) Rules, 1965. Moreso, the provisions of the CCS (Temporary) Rules, 1965 is applicable to the temporary Government Servant. In the present case, the petitioners, in any manner, would not fall under the temporary government servant as their appointments are clearly dehors the rules and antithesis to the scheme of public employment.

26. This Court also cannot lose its sight of the fact that so many candidates were allegedly interviewed for 3 (three) days and thereafter, appointment orders were issued without maintaining any records in the Office. It is astonished to see that such an important selection process of public employment has been carried out without any record. It also transpires that the concerned authority who has initiated the selection process, appears to have tried to run the show of the then Itanagar Municipal Council, having no regard for the rule of law that is to be maintained, respected and followed in this country.

27. In the case of ***Ashok Kumar Sonkar vs. Union of India and Ors.***, reported in **(2007) 4 SCC 54**, the Hon'ble Supreme Court has observed that a Court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. It has also been held that if an appointment is illegal, it is *non est* in the eye of law, which renders the appointment nullity.

28. In the present case, this Court noticed that in making appointment of the petitioners, the provisions of Article 14 & 16 of the Constitution of India and the Statutory Rules were not complied with. The appointment, therefore, was illegal and in that view of the matter, it would be wholly improper for this Court to invoke the equity jurisdiction.

29. Having considered the matter in its entirety, this Court is of the firm view that the selection process is clearly illegal and no right can be accrued to the petitioners out of such an illegal selection process even if they have joined the

posts and have undergone training. To support, it is said that if the foundation is removed, sub structure or super structure shall automatically fall. I am also of the view that the selection process appears to have been undertaken not only without authority or de hors the rules but also appears an element of fraud. As the fraud vitiates everything, the appointments of the petitioners are nullity. Thus, there is no requirement of following any principle of natural justice or any notice before issuance of any termination orders to the petitioners.

30. For the foregoing discussions and the reasons hereinabove, the petitioners are not entitled for any relief. Consequently, both the writ petitions are dismissed, being devoid of merit. No order as to cost.

JUDGE

Comparing Assistant