

(1) In this writ petition the writ petitioner namely Smti Bishnu Priya Pradhan made a prayer for a direction to the respondents to appoint/regularise her services in the post of Lower Division Clerk in short LDC, in pursuance of the related select list prepared during the year 1996 or, in the alternative, in terms of the Government policy/scheme of regularisation of ad-hoc services issued by the Govt. of Arunachal Pradesh vide, circular bearing Nos. OM 6/91 dated 31. 7. 96 and 19. 9. 96 as seen in the documents marked Annexure-19 series by contending inter alia, that she was initially appointed as skilled contingent peon in the Block Development Office, zero, Lower Subansiri District in the year 1991 and subsequently in the year 1993 she was given a fresh appointment to the post of LDC on ad-hoc basis vide, appointment order dated 3. 9. 93 as in annexure-3 to the writ petition, and her ad-hoc services have been extended from time to time till 8. 8. 96 (AN) against clear vacant post as seen in the document marked as Annexures A-4, A-5, A-6, A-7, A-8, A-9 and A-16 series and, during the existence of the said ad-hoc appointment of the petitioner in the post of LDC another order dated 9. 7. 96 was issued by the authority concerned thus appointing the petitioner as skilled contingent peon as seen in the document marked as Annexure-18 to the writ petition without any justification, however, the petitioner has been discharging her duties as LDC as on today but, her ad-hoc services have not been regularised under the related scheme/govt. Circular mentioned above. It is also the case of the petitioner that the petitioner was also selected for her appointment in the post of LDC and her name was enlisted in the panel, in the year 1996 and she is the sole OBC candidate, but the respondents authority did not appoint the petitioner and apart from that the respondents authority did not act upon the select list, inasmuch as, they had violated the reservation policy. According to the petitioner, if the reservation policy is/was to be followed, the petitioner being the lone OBC candidate, the authority concerned ought to have given appointment to her in the said post of LDC in terms of the related select List.

(2) The case of the writ petitioner is resisted by the respondents/competent authority by stating that the petitioner could not qualify in the selection process held by the authorities and as such her name was not amongst the 15 selected candidates notified by order dated 2. 6. 96, and the petitioner could not be accommodated due to non-availability of post of LDC at the point of time. At this stage, I may observe that the authority concerned admitted about the enlistment of the name of the petitioner in the panel list at Serial No. 25 and at Serial No. 8 according to the merit amongst the non-APST candidates. The respondents also contended that the services rendered by the writ petitioner was not continuous and there was break of services during her ad-hoc appointment and such the ad-hoc appointment/stop gap arrangement does not bestow to her any claim for regular appointment and, the life of the select list/ panel list had already expired. So far the related office memorandum/circular and claim of the writ petitioner in terms of it is concerned, the State-respondents stated that due to selection of a regular candidate on the recommendation of the DPC/ selecting authority, the said circular does not give to the aid of the writ petitioner.

(3) Mr S. Dutta, learned counsel, supporting the case of the writ petitioner, submitted that one Shri Subodh Nath who is similarly situated with the writ petitioner has been given appointment on regular basis to the post of LDC in terms of the related order dated 17. 1. 2000 passed by this Court in Civil Rule No. 480 of 1998 as seen in the document marked as 'x' for identification vide, order dated 2. 3. 2000 issued by the Deputy Commissioner, lower Subansiri District, Ziro. According to Mr Dutta, the State-respondents ought to have regularised the services of the writ petitioner in the post of LDC in terms of the related circular bearing on 6/91 dated 31. 7, 96/19. 9. 96, but, the authority concerned did not

consider the case of the petitioner in terms of the said circular/ scheme. It is also argued by Mr Dutta that a great discrimination has been meted out by the respondents authority towards the petitioner as the petitioner has been deprived of her regular appointment as to the said post of LDC in the existing facts and circumstances of the case. Supporting the case of the petitioner, Mr Dutta, learned counsel had relied upon the decision of this court rendered in Thangjam Yaima Singh, petitioner-Vs-State of Manipur and Ors, respondents reported in 2001 Volume 2 GLT page 637 and contended that no discrimination should be made in giving benefits of a judgment of the Court to the persons similarly situated.

(4) Mr R. H. Nabam, learned Addl. Sr. Govt. Advocate for the State-respondents contended that ad-hoc employees have no right to claim for regular appointment to the post or posts as their appointment was made for exigency of work and for stop gap arrangement. The learned Addl. Sr. Govt. Advocate also contended that there is a break of services in respect of the present petitioner, and she was not qualified in the selection process held by the authorities as her name was not amongst the 15 selected candidates though her name appears at Serial No. 25, and she should not be accommodated due to non availability of post of LDC at the point of time.

(5) Now, this Court is to see and examine as to whether the present writ petitioner has enforceable legal right in the instant case or not.

(6) The State-respondents/competent authority admitted the factum of ad-hoc appointment of the writ petitioner in the post of LDC till 8. 8. 96, and apart from that the respondents could not controvert the statement of the writ petitioner that though she has been given appointment as skilled contingent, she has been allowed to work and serve as LDC. According to me, though there is a short gap of service during the ad-hoc appointment of the writ petitioner, such gaps of services had been regularised by the authority concerned thus extending it from time to time as seen in the document marked Annexures A-4, A-5, A-6, A-7, A-8, A-9, A-16, A-17 and A-18 series and as such, such gap shall be treated as artificial gap.

(7) The relevant terms and conditions for regularisation of ad-hoc services of ad-hoc appointees under the Govt. policy/scheme finds its place in the related circular being OM 6/91 as seen in Annexure-19 series and the relevant portion of it is important, and accordingly, it is quoted below:

As ad-hoc appointments cannot be allowed to continue for an indefinite period as per rules

and instructions of the Govt. now considering the magnitude of problems arising out of ad-hoc appointments already made so far by different appointing authorities/heads of Departments/heads of Offices it is further decided by the Govt. as below:-

i) The (Bate of issue of Govt. circular No. OM 6/91 dated 31. 7. 96 shall be treated as \cut of date\ for appointment or promotion to any post on ad-hoc basis by all the authorities concerned under the Govt. except in respect of the type of cases informed to in para 3 of Govt. circular No. OM 6/91 dated 31. 7. 96. It is assumed that no ad-hoc appointment or ad-hoc promotion to any post has been made by the Heads of Departments/appointing Authorities concerned with effect from 1. 8. 1996 in pursuance of Govt. Circular No- OM 6/91 dated 31. 7. 96.

ii) In respect of all the employees appointed so far (i. e. upto 31. 7. 96 on ad

-hoc basis against direct recruitment posts by different Heads of departments/heads of Offices/appointing Authorities under the Govt. Status-quo' shall be maintained and they may be allowed to continue provisionally in officiating capacity against the posts instead of \ad-hoc capacity\ with immediate effect and until further instruction/order of the Govt. pending regularisation of their cases by the competent authorities as per following procedures:-

a) If recruitment rules exist in that case on the recommendation of constituted DPC /selection Board (recommendation to be based on educational/technical/professional qualification, experience and performance of the incumbents),

b) if no recruitment rules exist at present in that case on the recommendation of a

Board to be constituted (recommendation to be based on educational/technical/professional qualification, experience and performance of the incumbents,

iii) All the cases of ad-hoc promotion so far effected under the order of respective Heads

of Departments/heads of Offices/appointing Authorities shall be placed

before the constituted DPC /selection Board or APPSC, as the case may be, by the authorities concerned immediately, for consideration/regularisation of such cases by the DPC /selection Board/APPSC strictly in accordance with the provisions of

existing recruitment rules within a period of 6 (six) months from the date of issue of

this circular.

iv) Further instruction of the Govt. on the point of monitoring the cases of ad-hoc appointment/ad-hoc promotion and on other allied matters relating to ad-hoc appointment/promotion and for regularisation of cases of existing ad-hoc appointees will be issued separately in due course.

Receipt of this circular may be acknowledged.

Sd /-

D. C. Misra

Chief Secretary,

Govt. of Arunachal Pradesh, Itanagar. \

On perusal of the available materials on record and also considering the nature of the case, I am of the view that the case of the present writ petitioner is covered up by the said scheme/govt. circular bearing no. OM 6/91 dated 31. 7. 96/19. 9. 96 as seen in the documents marked as 19 scries, and counter affidavit of the respondent Deputy commissioner concerned but the respondents authorities did

not consider the case of the petitioner in terms of the said circular/memorandum/govt. policy being No. OM 6/91 in any point of time, though the writ petitioner has the right for consideration of regularisation of her services in terms of it. According to me, this legitimate rights of the writ petitioner under the said circular OM 6/91 have been deprived of by the respondents authorities, so far the selection of the writ petitioner and enlistment of her name in the panel: the authority concerned also had failed to examine the fact that the petitioner is the sole OBC candidate at the relevant time, and if the authority concerned followed the reservation policy of OBC candidate, certainly the writ petitioner ought to have been given appointment as solitary OBC candidate in the existing vacant post under the reservation quota.

(8) The related circular/scheme as highlighted above, also speaks that all the employees appointed on ad-hoc basis in other words so far appointed upto 31. 7. 96 against direct recruitment posts. Status-quo shall be maintained and they may be allowed to continue provisionally in officiating capacity against the posts instead of ad-hoc capacity with immediate effect and until further instruction/order of the Govt. pending regularisation of their services. This aspect was not looked into properly by the respondents-authorities in case of the present petitioner, inasmuch as, she has been given appointment subsequently as skilled contingent but, petitioner has been allowed to perform the same and similar duties of LDC after such appointment till date. Therefore, her case deserves consideration for regularisation of her services by the authority concerned in terms of the said scheme/circular bearing no. OM 6/91.

(9) The statement of the writ petitioner, which finds its place in paragraph 12 of the writ petition, has its value in as much as two candidates namely Shri Lal Bahadur Rai and Shri Tage Tada who appeared for selection and appointment to the posts of upper Division Clerk in short UDC had been given appointment to the posts of LDC during the validity period of the select/panel list of the candidates including the petitioner thus resulting arbitrariness and denying the appointment to the petitioner in the post of LDC. At this stage, I hereby, [recall a decision of the Apex court rendered in Ajay Hada and Ors. , petitioners- Vs-Khalid Mujib Sehravardi and ors. , respondents reported in (1981) Vol. I SCC 722 wherein the Apex Court held thus:

\that: Article 14 strikes at its arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is involved by the Courts is not para phrases of Art. 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under article 14 would be breached. Wherever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive: or of any authority under Art. 12 article 14 immediately springs into action and strikes down such state action. \

(10) Considering the case of the petitioner and also keeping in view of the related decision of the Apex Court as well as of this Court as highlighted above, I am of the view that the writ petitioner has enforceable legal right in the instant case. In view of the above position, I direct the respondents/authority concerned to consider the case of the petitioner in terms of the said scheme/circular bearing No. OM 6/91 dated 31. 7. 96/19. 9. 96 as seen in the document marked as Annexure-19 series and counter affidavit of the Deputy commissioner concerned pertaining to the regularisation of services of the ad-hoc appointees; as early as possible preferably within a period of three months from the date of receipt of this order, for regularisation of the services of the writ petitioner in the post of LDC under the respondents Department. It is also made clear that the re

spondents shall look into the matter pertaining to the regularisation and appointment of one Shri Subodh Nath to the post of LDC on regular basis in terms of the related Court's order as seen in the document marked as 'x' for identification while considering in the case of the writ petitioner. According to me, the said Shri subodh Nath, whose case is similarly situated with the present writ petitioner. Be that as it may, the competent authority shall examine this aspect also while considering the case of the petitioner or regularisation of appointments of her services in the post of LDC.

(11) For the reasons, observations and directions made above, this writ petition is disposed of but, no other order as to cost.