

WP(C) 567/2005

BEFORE

THE HON'BLE MR. JUSTICE H. N. SARMA

( 1 ) Heard Mr. P. Taffo, learned counsel for the petitioner and also heard Mr. A Apang, learned Additional Senior Govt. Advocate appearing on behalf of the State respondents.

( 2 ) The petitioner having been appointed as Lower Division Clerk (LDC) under the district Ministerial Cadre of Lohit District and joined in the said post in the year 1983. In terms of the relevant service rules, the petitioner was promoted to the rank of Upper division Clerk (UDC) vide order No. LE-G 151/pt-111/95/12 942-48 dated 1. 7. 1998 (Annexure-1 to the writ petition ). While the petitioner was serving as UDC, he acquired some experience in the accounts procedures and matters. In the meantime, one post of udc having been created in the office of the district Urban Development Agency, the commissioner, Urban Development vide letter No. DUDA/esstt-130/2001-02/2027-42 dated 5. 8. 2002 wrote to the Deputy Commissioner-cum-Chairman, DUDA of different districts for placing in the said post of UDC under the disposal of Deputy Commissioner-cum-Chairman, DUDA, wherein it was also stated that instructions are being issued separately regarding the transferability of persons between the District and the State HQ, joint seniority etc.

( 3 ) The Deputy Commissioner, Lohit District, Tezu under whom the petitioner was serving as UDC and in terms of the order of the Commissioner, Urban Development, issuing office order No. B/49/448 dated 5. 9. 2002 transferred the petitioner from his establishment to the District Urban Development Agency at Tezu against the said newly created post. It may be stated herein that during the relevant time the petitioner was serving as UDC in the Block Development office, Howai in Lohit District. Pursuant to the aforesaid transfer order, the petitioner joined in his duty in the Urban Development agency on 20. 11. 2002. The petitioner, after joining in the District Urban Development agency has been allowed to work as Cashier and he is rendering service in the same capacity till date. To put it otherwise the service of the petitioner has been accepted by the Urban Development Agency.

( 4 ) It is submitted that some of the persons in the Urban Development having raised objection regarding the payment of salary of the petitioner, some problems arose regarding the payment of salary, which was however paid up to August, 2005 without any default. But from September, 2005, the payment of salary of the petitioner has been suddenly stopped. Various requests/representations made by the petitioner having failed to evoke any response the petitioner has approached this Court by way of this writ petition.

( 5 ) An affidavit-in-opposition has been filed on behalf of the respondent Nos. 1 to 3, contending inter alia is that the petitioner was transferred and posted in the Urban Development Agency without the consent of the said Department and accordingly, they are not liable to pay his salary. The Deputy Commissioner on the other hand in his affidavit has stated that in terms of the order passed by the Commissioner, Urban Development dated 5. 8. 2002 the Deputy Commissioner is entitled to fill up the said post locally by way of transfer. The Deputy Commissioner has also in his affidavit, the letter No. LE-015/ pt-IV/19678 dated 26. 12. 2003 addressed to the Commissioner, Urban Development, Itanagar, wherein a request was made to look into the matter regarding the payment of salary to the petitioner from the Urban Development Agency.

( 6 ) It is submitted by Mr. Taffo, learned counsel for the petitioner that even if there might be certain differences between the Urban Development Agency and the Deputy commissioner, the petitioner should not be suffered for that and he should be paid to his due: salary in accordance with law. The non payment of salary to the petitioner since September, 2005 has caused tremendous financial hardships

hip to him in as much as he is to maintain his family including minor school going children and the service in question is his only source of livelihood.

( 7 ) Mr. Apang, learned Additional Senior govt. Advocate has not disputed this position regarding the entitlement of the salary of the petitioner. It is submitted by Mr. Apang that due to certain differences of opinion between the Deputy Commissioner and the Urban development Department, the petitioner is not getting his salary.

( 8 ) I have considered the rival submissions made by the parties. Vide order No . GA-56/ 78 dated 10th September, 1981, issued by the chief Secretary of the State, a common and one District Ministerial Cadre (Group-C post) is created under control of Deputy Commissioner for district offices of all department including the establishment of the Deputy (but excluding the Engineering and Forest Departments) in the districts of Arunachal Pradesh and the Deputy Commissioner of the District would be the Cadre controlling authority.

( 9 ) Against the letter written by the Director, Urban Development and Housing regarding repatriation of the petitioner to his office, the Deputy Commissioner, Tezu vide his letter dated 2. 5. 2005 specifically replied that it is not possible to accommodate the petitioner in the Office of the Deputy Commissioner since no vacancy of UDC exists at present. In fact, the post of UDC sanctioned for up to his office has become a part of district establishment and hence the question of repatriation of the petitioner does not arise at all and the Deputy Commissioner requested to provide necessary fund for payment of salary to the petitioner.

( 10 ) From the aforesaid discussions, it is thus clear that the Deputy Commissioner is the appointing and cadre controlling authority of the Group-C staff of the District and the said authority of the District has not been denied. In exercise of the said power as well as in terms of the letter of the Commissioner, Urban Development dated 5. 8. 2002, the petitioner was posted as UDC in the District Urban Development Agency and the department is happily utilizing the service of the petitioner as Cashier in the Department. In such circumstances, it is the duty and obligation of the Urban Development Agency to pay the necessary salary to the petitioner. The right to get the salary by an employee in view of the statutory rule guiding the service conditions, become a statutory right of such employee.

( 11 ) Accordingly, the petitioner has got statutory right to get his salary from the hands of the respondents. That apart, right under article 16 of the Constitution of India read with Article 21, the petitioner has been adversely affected in the hands of the respondents in the facts and circumstances of the case.

( 12 ) In view of the aforesaid discussion, this writ petition is allowed and the respondent authorities, particularly, the respondent nos. 1, 2 and 3 are directed to pay the arrear due salary to the petitioner with effect from September, 2005 to till date and thereafter they shall pay the regular salary to the petitioner every month like that of other employees. The arrear salary be paid to the petitioner within a period of one month from the date of receipt of a certified copy of this order. At this stage it is brought to the notice of the Court by Mr. Taffo that this Court vide order dated 7. 10. 2005 and 14. 12. 2005, issued interim directions to the respondent No. 3 namely, the Director of Urban Development department to pay the salary to the petitioner but the said orders have not yet been complied with. In view of the final order passed in this writ petition, I am not inclined to take up any consequential measures against the Respondent No. 3 for violation of the aforesaid orders except directing the said authority to comply with the directions passed herein above within the stipulated period.