

BEFORE

THE HON'BLE MR JUSTICE T.N.K. SINGH

1. Heard Mr. S.C. Kayal, learned counsel for the petitioner and Mr. P.S. Deka, learned Govt. Advocate. None appears for the private respondent.

2. Since the appointment of the respondent No.4 was made on casual basis at a fixed monthly pay her such appointment has not been challenged before us and therefore, in view of the order that this Court is proposed to pass, there is no necessity for serving of notice upon the respondent No.4. The notice upon the respondent No.3 is presumed to have been served.

3. The challenge made in this writ petition is that the judgment and order dated 3.7.99 passed by the learned Assam Administrative Tribunal, Guwahati in Case No.33 ATA/1998, the respondent No.3 challenge the appointment of the petitioner as L.D. Assistant Cum Typist appointing her in the Office of the CDPO Rajabazar ICDS Project by the Director, Social Welfare & Probation, Assam, Guwahati vide order dated 29.3.95. The aforesaid order appointing the petitioner was challenged by the respondent No.3 on the ground that in the select list prepared by the authority for appointment of L.D. Assistant under different ICDS projects in the Social Welfare Department. The interview was held on 30.9.94 wherein the name of the petitioner appeared at Sl No.19 where that of Respondent No.3 appeared at Sl No. 11, and ignoring the name of the respondent No.3, the person below the name of the respondent No.3 was illegally appointed.

4. The learned Tribunal vide judgment and order set aside the appointment of the petitioner holding the same to be illegal and declaring void. The learned Tribunal having found that the present petitioner having appointed on 29.3.95 on the basis of the select list dated 30.9.94 placing the name of the petitioner at Sl No.19 ignoring the case of the respondent No.3, whose position was found to be at Sl No.11 passed the impugned order accepting the contention of the respondent No.3.

5. Mr. S.C.Keyal, learned counsel for the petitioner submits that at least 10 more appointments were made. The petitioner was also appointed by letter dated 29.3.95 and after filling up the vacancies by appointing candidates who were selected on the basis of the select list dated 30.9.94, the said select list has been exhausted. Accordingly, it is the contention of the learned counsel for the petitioner that the said select list having spent its force by appointment of 10 candidates in the vacancies for which select list was prepared, the respondent No.3 have no right to claim for appointment on the basis of the said select list. It is pointed out by Mr. Kayal that the learned tribunal passed the impugned order without causing service of notice upon the petitioner (Respondent No.3) and had the notice been served the petitioner would have got an opportunity to represent her case by producing relevant documents justifying her appointment.

6. I have gone through the record available before me also the original record of the appeal forwarded by the learned Tribunal and perused the necessary order sheet. Order sheet does not disclose that notice upon the present petitioner (respondent No.3) before the Tribunal was served. The contention of Mr. Kayal accordingly is found to have substance.)

7. (The learned tribunal disposed the entire appeal without serving notice upon the present petitioner (Respondent No.3 in the appeal). The learned counsel appearing for the writ petitioner did not point out the aforesaid fact at the time of hearing. Consequently, the said appeal was decided behind her back in gross violation of the principles of natural justice.

8. It is no longer res integra that appointment of a person cannot be quashed by a judicial authority without affording such person any opportunity of hearing, more particularly when there is dispute on factual aspect. Accordingly, short contention of the petitioner is that the petitioner is entitled to an opportunity of being heard.

9. In view of the discussions made above, the impugned order passed

d by the learned Tribunal is set aside and the matter is remanded back to the learned Tribunal for deciding the matter in accordance with law, serving proper notice upon the concerned authorities.

10. However, no further notice is required to be issued to the present petitioner (Respondent No.3 in the appeal) and she shall appear before the learned Tribunal on 23.11.06. Notice upon the other respondents and the appellant before the Tribunal shall be served by the Tribunal before final hearing of the appeal.

Registry is directed to transmit the L.C.R forthwith.