

**IN THE GAUHATI HIGH COURT**

**(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH(NAHARLAGUN)**

**WA No.26(AP)2018**

1. Smti Phassang Chayum (Kipa)  
Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.  
Ph. No. 8731042680
2. Shri. Kipa Chungkap, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
3. Shri. Kipa Mabu, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
4. Shri. Kipa Kayuf, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
5. Miss. Nyri Yangfo, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
6. Miss. Tage Rinya, Officiating Agriculture Field Assistant (Jr). Residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
7. Miss. Pema Eton, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
8. Miss. Chhado Derma, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
9. Miss. Nilima Mongriju, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
10. Shri Dinesh Tajo, Officiating Agriculture Field Assistant (Jr). residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.
11. Shri Ram Bagang, Officiating Agriculture Field Assistant (Jr.) residence of Pachin Colony, Naharlagun Papumpare District, Arunachal Pradesh.

.....Appellants

-/s-

1. The Secretary, Department of Agriculture, Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
2. The Director of Agriculture, Government of Arunachal Pradesh, Nagarlagun, Papumpare District, Arunachal Pradesh.
3. Shri Hage Kano, age 58 years, S/o. Late Hage Dolly, R/o. Hari Village, P.O. and P.S. Ziro, Lower Subansiri District, Arunachal Pradesh.

.....*Respondents*

By Advocates:

For the Appellants: Mr. Jakir Hussain

For the respondents: Mr. Lissing Perme, SC(Agriculture)

Ms. Deepa Yoka, respondent No. 3

**::BEFORE::**

**HON'BLE MR. JUSTICE MANOJIT BHUYAN  
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

Date of hearing : 25.07.2018

Date of Judgment : 25.07.2018.

### **JUDGMENT & ORDER**

*(Mrs. R.K. Phukan, J)*

Heard Mr. J. Hussain, learned counsel for the appellants. Also heard Mr. L. Perme, learned Standing counsel, Agriculture Department, for respondents No. 1 and 2; and Ms. D. Yoka, learned counsel for private respondent No. 3.

**2.** The appellants herein 11(eleven) in numbers were appointed as Agriculture Field Assistant (Junior) on officiating basis for 1 (one) year, under the Department of Agriculture, Government of Arunachal Pradesh vide Orders, dated 25.07.2017, by the Director of Agriculture, Government of Arunachal Pradesh. Accordingly, the petitioners joined on 26.07.2017 in their place of posting. In the meantime, the Secretary (Agriculture), Government of Arunachal Pradesh vide order dated 04.09.2017 cancelled the entire appointment orders of the appellants on the ground that the appointments so made were without maintaining any transparency and observing the official formalities as per the provisions of the Recruitment Rules with immediate effect until further order. Challenging the aforesaid order of termination the appellants filed

WP(C)671(AP)2017 on ground that they were not given a reasonable opportunity of being heard thereby denying natural justice. Further contention raised was that no any notice was served upon them nor any departmental proceeding was drawn prior to such termination of service and they are entitled to the protection under Article 311(2) of the Constitution of India.

**3.** The State respondents in their affidavit-in-opposition denied such issuance of appointment letter by any official process. Rather, the same was stated to be fake appointment orders. Although the Director who issued such appointment letter admitted to have issued such appointment letters but the other State respondents contended that Director of the Agriculture is not the competent authority to issue such appointment letters in view of the Standing Order dated 31.10.2016, issued by the Secretary (Agriculture), Government of Arunachal Pradesh and there is no official record of issuing such appointment letter.

**4.** Learned Single Judge, on an appreciation of the materials on record and on the basis of documents produced, answered the writ petition by holding that there is no illegality in the cancellation of such fake appointment letters by the State respondents and that the petitioners are not entitled to take shelter under the provision of Article 311(2) of the Constitution of India.

**5.** Challenging the aforesaid impugned order and judgment passed by the learned Single Judge in the aforesaid writ petition, present appeal has been preferred on the ground that the appellants were appointed in the said post in the exigency of service and the Director of Agriculture has the power to appoint them. The officiating appointment is also stated to be covered under Article 311(2) of the Constitution of India and well protected under the said provision of law.

**6.** We have heard the submission of learned counsels for both the parties and perused the impugned judgment.

**7.** According to Mr. Hussain, Director of Agriculture is a competent authority to issue such appointment letter, who has in fact admitted about such issuance of appointment letter to the appellants, and the Secretary of the Agriculture Department cannot delegate such power of the Director to another

person. Highlighting the provisions under Article 311 of the Constitution, the learned counsel for the appellant has vehemently urged before this Court that the appellants should be extended the protection given under Article 311(2) of the Constitution, at least to continue in the post till expiry of the 1 (one) year period in terms of the appointment order.

**8.** Mr. Perme, learned Standing counsel has opposed such contention of the appellants and submits that the appellants cannot be permitted to avail benefit in any score. Firstly, because there being no any Office file as regards the issuance of such appointment letters, the said appointment letters were found to be fake, which was issued by the Director on extraneous considerations after few days of his retirement. Further, the appellants cannot claim to have any enforceable legal right on such fake appointment letters whatsoever and hence not entitled to any relief. It has been urged further by the learned standing counsel that such appointments letters issued by the Director by violating the Standing Order is another vital aspect to show that the appointment orders were for extraneous reasons.

**9.** The primary contentions raised before us are on two specific counts, that is, the Director is empowered to issue such temporary appointment letter and that the appellants are entitled to the protection as envisaged under Article 311 of the Constitution.

**10.** On careful examination of the appointment letters issued to all the appellants, it would go to show that it were a stereotyped appointment letters issued by the Director. One of the appointment letter is extracted hereunder:

**"Government of Arunachal Pradesh  
Office of the Directorate of Agriculture  
Naharlagun  
Order**

**No.AGRI/Estt-16/2015-16 Dated Naharlagun, the 25<sup>th</sup> July'2017**

**Smti. Phassang Chayum (Kipa) is hereby appointed to the post of Agriculture Field Assistant (Junior) under the Department of Agriculture, Arunachal Pradesh on officiating basis for a period of 1 (one) year with effect from the date of joining in the pay band of Rs. 5,200-20,200 + GP 2,400/- p.m. plus other allowance and concessions as admissible under rule and posted under the Deputy Director Agriculture (Training), Farmer Training Centre Ziro, Lower Subansiri District, Arunachal Pradesh.**

**The appointee shall submit a fresh medical Certificate of his/her fitness obtained from a medical officer not below the rank of D.M.O/Civil Surgeon at the time of joining.**

**The appointee shall undergo 2 (two) years of basic agriculture course at GTC, Pasighat as and when nominated by the Govt.**

**Other conditions of services, which have not been specified herein, shall be governed by relevant rules and order in forced from time to time.**

**Sd/-  
Hage Kano  
Director of Agriculture  
Govt. Of Arunachal Pradesh  
Naharlagun.**

**Memo No. No. AGRI/Estt-16/2015-16 Dated Naharlagun, the 25<sup>th</sup> July' 2017"**

**11.** A bare perusal of the aforesaid order would reveal that there was no any Government approval while issuing such appointment letters. Nor it shows that they recruited against sanctioned posts/vacancies by observing any procedure. The aforesaid appointment orders were issued on 25.07.2017 even when there was a Standing Order issued by the Secretary, Agriculture Department dated 31.10.2016 whereby the Joint Director, Agriculture was delegated to look after the Establishment matters. Matters of appointment are establishment matters and the same was within the knowledge of the Director while issuing the appointment letters.

**12.** The grievances of the appellants is also contrary to the decision rendered by the Supreme Court in **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, 2006 (4)SSC 1**, wherein it has been specifically held that *"the power of a State as an employer is more limited than that of a private employer, inasmuch as, it is subjected to constitutional limitations and cannot be exercised arbitrarily. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public service and the post in connection with the affairs of the Union or any of the States. Therefore, when the statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed."*

**13.** As regards the contention of the appellants that such an officiating appointment for a temporary period of one year should be allowed, it is to be

noted that when the appointment letter itself is found to be fake, the same can be treated as *non-est* in the eye of law in the given backdrop.

**14.** Observation made in **State of Bihar Vs. Upendra Narayan Singh and others 2009 (5) SSC 65** has been rightly relied upon by the learned Single Judge which is quoted below:

*"If the initial appointment are found to be illegal per se the direction given by the High Court for their reinstatement with consequential benefits cannot be approved. It was further held in the said case that initial appointment being made in gross violation of doctrine of equality enshrined in Articles 14 & 16 of the Constitution of India and the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, the learned Single Judge of the High Court gravely erred by directing their reinstatement with consequential benefits."*

**15.** The present matter in hand is squarely covered by the aforesaid decisions rendered by the Hon'ble Apex Court. Similarly, in the case of **State of U.P and others Vs. U.P. State Law Officers Association and others, 1994 (2) SCC 204** it was held that the persons appointed by arbitrary procedure cannot challenge termination of their services as arbitrary. Those who come by back door have to go by the same door.

**16.** While appointing the present appellants they are stated to be appointed on "*officiating basis*". In examining the scope of officiating appointment, it was observed by Division Bench in **R. K. Ramkelin Vs. State of Manipur & Others** reported in **1990( 2) GLJ 303** that:

*"The officer to officiate must be the one who has already been in the service and not be a fresh recruit"*

**17.** In **Arun Kumar Vs. SE Railway, AIR 1985 SC 482**, examining the term officiating held as follows:

*"According to its ordinary connotation, the word 'officiating is generally used when a servant having held one post permanently or substantively is appointed to a post in a higher rank, but no*

*permanently or substantively, while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in higher post due the death or retirement of the incumbent or otherwise. In contrast, the word 'temporary' usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post."*

In view of the principle laid down the use of word 'officiating' in the appointment letter issued to the appellants are not valid in the first place and hence cannot vest any right upon the appellants.

**18.** On the aspect of scope of Article 311 of the Constitution to be employed to the public servant, we need to revisit the provision, relevant portion being reproduced hereunder:

**311, Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**

- (1) No person who is a member of civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
- (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

**19.** The petitioner relying upon the decision of **R. S. Sial Vs. State of U.P and others** reported in **1975 (3) SCC 11** submits that the appellants are entitled to protection under Article 311 (2). On the other hand the learned counsel for the State respondents has relied on the decision in **State of Manipur Vs. Y. Token Singh and others, (2007) 5 SCC 65** and in the case of **State of Bihar and Others Vs. Chandreshwar Pathak (2014) 13 SCC 232** to buttress his argument that the appellants are not entitled to the protection of Article 311.

The decision rendered in **R.S. Sial** (Supra) will not come to the rescue of the appellants as the same was rendered in a different context. The persons referred in the said decisions' were holding regular post.

**20.** In **Chandreshwar** (supra) and **Y. Token Singh** (supra) the question for consideration was as to whether appointment of a person without any advertisement or selection process can be considered to be a valid appointment to a public post protected under Articles 14 or 311 of the Constitution of India and it was answered that no person can be appointed even on temporary or adhoc basis without initiating selection process and such persons could be validly terminated and their appointment is not protected.

**21.** By taking note of the fact that the appointments were cancelled not on the ground of some irregularities that has been committed in the process of recruitment but on the ground that they are *non-est* in the eye of law and purported appointment letters were fake, it has been held in **Y. Token Singh** (supra) that in case of such nature the principles of natural justice are not required to be complied with, particularly when the same will result in futility. It is further held that if the appointments were forged documents the State could not have been compelled to pay salaries to them from the State exchequer. Any action taken by the authority in complete violation of constitutional and legal frame-work, would not be binding on the State. Moreover, persons praying for issuance of writ in the nature of mandamus has to establish their legal rights to enable the Court to issue a writ of mandamus. The applicants have failed to establish that their appointments had been made following the constitution scheme.

**22.** In view of the discussions and findings above, we find no merit in the appeal. Accordingly, the same stands dismissed. No cost.

**JUDGE**

**JUDGE**