

**IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

1. WP(C)417(AP)2016

Lingdum Taki & 2 ors.

.....Petitioners

By Advocates:

Mr. Khoda Tama
Mr. D. Saikia
Mr. T. Nikam
Ms. H. Jeram
Mr. L. Kurdu
Mr. D. Apo
Mr. K. Tassang
Mr. T. Poha
Mr. K. Dorjee
Mr. G. Kamduk
Mr. T. Koyang

Versus-

1. The State of Arunachal Pradesh represented through the Commissioner/Secretary of Home Department, Government of Arunachal Pradesh, Itanagar.
2. The Director General of Police, Government of Arunachal Pradesh Itanagar.
3. The Assistant Inspector General of Police(E), Government of Arunachal Pradesh, Itanagar.
4. **Sri Paktum Basar**, Constable, Arunachal Pradesh Police(Civil), Government of Arunachal Pradesh, C/o Police Headquarter(PHQ), Chimpu, Arunachal Pradesh, & **144 private Respondents.**

.....Respondents

By Advocate:

Mr. Kardak Ete, Senior Additional Advocate General, Arunachal Pradesh.

2. WP(C)520(AP)2016

Kangpong Wanghop & 24 ors.

.....Petitioners

By Advocates:

Mr. Khoda Tama
Ms. H. Jeram
Mr. G. Kamduk
Mr. T. Koyang

Versus-

1. The State of Arunachal Pradesh represented through the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Commissioner/Secretary of Home, Government of Arunachal Pradesh, Itanagar.
3. The Director General of Police, Government of Arunachal Pradesh Itanagar.
4. The Assistant Inspector General of Police(E), Government of Arunachal Pradesh, Itanagar.
5. **Shri Paktum Basar**, Constable, Arunachal Pradesh Police(Civil), Government of Arunachal Pradesh, C/o Police Headquarter(PHQ), Chimpu, & **144 private Respondents**.

.....*Respondents*

By Advocate:

Mr. Kardak Ete, Senior Additional Advocate General, Arunachal Pradesh.

Mr. Ninnong Ratan

Mr. M. Ete

Mr. T. Norbu

Mr. T. Taggu

3. WP(C)606(AP)2016

Hibu Raju & 125 ors.

.....*Petitioners*

By Advocates:

Mr. Khoda Tama

Ms. H. Jeram

Mr. T. Poha

Mr. G. Kamduk

Mr. T. Koyang

-Versus-

1. The State of Arunachal Pradesh represented through the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Commissioner/Secretary of Home, Government of Arunachal Pradesh, Itanagar.
3. The Director General of Police, Government of Arunachal Pradesh Itanagar.
4. The Assistant Inspector General of Police(E), Government of Arunachal Pradesh, Itanagar.
5. **Shri Paktum Basar**, Constable, Arunachal Pradesh Police(Civil), Government of Arunachal Pradesh, C/o Police Headquarter(PHQ), Chimpu, & **144 private Respondents**.

.....*Respondents*

By Advocate:

Mr. Kardak Ete, Senior Additional Advocate General, Arunachal Pradesh.

4. IA(WP)170(AP)2016

Sri Paktum Basar & 144 ors.

.....Applicants

By Advocates:

Mr. K. Loya

-Versus-

Shri Lingdum Taki & 5 ors.

.....opposite parties

By Advocate:

Mr. Khoda Tama

5. IA(WP)176(AP)2016

Shri Lingdum Taki & 2 ors.

.....Applicants

By Advocates:

Ms. Hinti Jeram

-Versus-

State of Arunachal Pradesh & 147 ors.

.....opposite parties

By Advocate:

Mr. Ninnong Ratan

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 18-11-2016

Date of Judgment & Order : 24-11-2016

JUDGMENT & ORDER(CAV)

Heard Mr. Khoda Tama, learned counsel for the petitioners.

Also heard Mr. Kardak Ete, learned Senior Additional Advocate General, Arunachal Pradesh, assisted by Mr. Duge Soki, learned Addl. Senior Government Advocate, appearing on behalf of State Respondents, and Mr. Ninnong Ratan, learned counsel appearing on behalf of the private Respondents.

2. All these 3(three) writ petitions are being disposed of by a common judgment & order in view of the fact that the challenge made, is identical in all these writ petitions i.e. the order dated 15.07.2016, which is quoted below:

**"GOVERNMENT OF ARUNACHAL PRADESH
HOME DEPARTMENT
ITANAGAR**

NO. HMB(A)-3/2016

Dated Itanagar the 15th July, 2016

ORDER

In pursuance to the Hon'ble Guwahati High Court, Itanagar Permanent Bench, Naharlagun, judgment & order dated 20.11.2014 passed in the two writ petitions numbered WP(c) 61(AP)2014/Ct. Sowai Ingtong & ors. vs- State of AP & ors and WP(c) 329(AP)2014 in Ct. Danny Sarke & ors. vs- State of AP & ors and Cabinet Decision dated 11th July, 2016, the Governor of AP is pleased to extend the validity period of the merit list in respect of the promotion to the post of Head Constable as notified in pursuant to the Departmental merit list test conducted vide order No. PHQ/Estt.-A/05/2008 dated 27.03.2008 for enabling the consideration the case of promotions from the post of Constable to Head Constable in respect of the two writ petitioners and other similarly situated candidates as one time measure.

***Sd/- Shakuntala D. Gamlin, IAS
Chief Secretary
Government of Arunachal Pradesh***

Itanagar."

3. Petitioners' counsel submits that the petitioners were appointed to the post of Constables in Arunachal Pradesh Police(Civil) in the year 2008, 2009 and 2012.

As per the Head Constable(Civil), Group 'C' Non-gazetted, Non-Ministerial Recruitment Rules, 1987(hereinafter referred to as Rules of 1987), promotion to the post of Head Constable was to be done from the feeder post of Constable. The method of recruitment was 50% by promotion and 50% by Limited Departmental Examination (LDE, for short).

4. Petitioners' counsel also submits that the State of Arunachal Pradesh had conducted a LDE in the year 2008 for promoting Constables to 61 nos. of vacant posts of Head Constable. He also submits that 61 nos. of vacant posts of Head Constable were filled-up in pursuance to the LDE held in the year

2008. The 13(thirteen) names that were kept in the waiting list in pursuance to the LDE of 2008, were also subsequently promoted to future vacancies that occurred in the post of Head Constable.

5. Petitioners' counsel also submits that Rules of 1987 was thereafter repealed and replaced by the Head Constable(Civil), Group 'C' Non-gazetted, Non-Ministerial Recruitment Rules, 2010(hereinafter referred to as 'Rules of 2010').

6. As per the Rules of 2010, the method of recruitment to the post of Head Constable was 60% by promotion and 40% by way of LDE. The promotion to the posts of Head Constable under 60% promotion quota, was to be done from constables having 3(three) years regular service in the grade of constables. For filling-up the remaining 40% post by way of LDE, a constable was to have completed 2 years regular service in the grade.

7. Petitioners' counsel further submits that Assistant Inspector General of Police(E), Chimpu, issued a W.T. Message dated 06.12.2007 to various police authorities in the State of Arunachal Pradesh, informing them of the proposal to conduct merit examination for preparation of panel list for promotion of constables to Head Constables.

Thereafter, the impugned order dated 15.07.2016 was issued by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, which extended the validity period of the merit list, made in pursuance to the LDE held in the year 2008 for promotion of constables to Head Constable, as an one-time measure. Subsequently, the State Respondents issued a W.T. Message dated 25.07.2016, wherein a list of 151 constables were identified to be promoted to the post of Head Constable within the 40% quota reserved for promotion to Head Constable, by way of LDE.

8. Petitioners' counsel submits that the waiting list in respect of 2008 examination for promotion of constables to the post of Head Constable, having been utilized fully and as the vacant posts of Head Constable were filled-up in pursuance to the 2008 examination, the subsequent vacancies that occurred in

the post of Head Constables, from the year 2010 till date, have to be filled-up as per the Rules of 2010.

Petitioners' counsel further submits that vacancies that occurred from the year 2010-2016 has to be filled-up on the basis of seniority for 60% of the vacant post and 40% LDE quota, provided for in the Rules of 2010.

Petitioners' counsel also submits that the State Respondents have not conducted any LDE for promotion to the posts of Head Constable subsequent to the LDE held in the year 2008.

Petitioners' counsel submits that the LDE has to be conducted, afresh, to fill-up the vacancies that occurred between 2010 to 2016, the 40% quota reserved for LDE candidates cannot be filled-up on the basis of an examination held in the year 2008 as the same is hit by Article 14 and the laws laid down by the Apex Court.

9. Mr. Ete, learned Additional Advocate General, Arunachal Pradesh, submits that though W.T. Message dated 25.07.2016 calls for the particulars of 151 nos. of constables, for promotion to the post of Head Constable, the actual number of vacancies to be filled-up on the basis of the W.T. Message dated 25.07.2016 is 146 nos..

10. Mr. Ete, learned Additional Advocate General, Arunachal Pradesh, submits that besides 146 vacancies that are to be filled-up in pursuance to W.T. Message dated 25.07.2016, there are an additional 69 no. of vacancies which are to be filled-up as per the Rules of 2010.

He also submits that as the Rules of 1987 did not provide any reservation/quota for lady constables for promotion to the post of Head Constable, a policy decision was taken by the State Cabinet to reserve 10% quota for lady constables from the LDE held in the year 2008 for promotion to the post of Head Constable, i.e. from the 50% quota reserved for promotion through LDE. Accordingly, 40% out of the 50% quota for promotion to the post of Head Constable through LDE, was filled-up on the basis of the merit list

made in pursuance to the 2008 examination. The remaining 10% was filled-up by promoting the lady constables, even though they had secured less marks than their male counterparts.

11. Mr. Ete, submits that WP(c) 61(AP)2014 and WP(c) 329(AP)2014 were thereafter filed in this Court, challenging the appointments made to the lady constables, on the ground that the lady constables secured less marks than the petitioners in the 2008 examination. The further ground taken by the petitioners in the above two writ petitions was that the policy decision taken by the State Cabinet reserving 10% out of 50% quota reserved for promotion through LDE, was on the basis of a policy decision of the State Cabinet, which could not override the Rules of 1987, as the Rules of 1987 had not been amended.

12. WP(c) 61(AP)2014 and WP(c) 329(AP)2014 were disposed of by this Court vide judgment & order dated 20.11.2014, wherein it was held that the challenge to the promotion of the lady constables was hit by laches and was accordingly dismissed. However, the State Respondents were directed to promote the petitioners to the posts of Head Constable.

13. Mr. Ete, learned Senior Additional Advocate General, Arunachal Pradesh, thus, submits that it was due to the above judgment & order passed by this Court in WP(c) 61(AP)2014 and WP(c) 329(AP)2014, that a policy decision had been taken by the State Cabinet, as a one-time measure, that the vacant posts of Head Constable that occurred within the period from 2010-2016, should be filled-up from the merit list made in pursuance to the 2008 examination, though in pursuance to the LDE held on 27.03.2008, as per the Rules of 1987 for filling-up of 122 vacancies, 61 posts were filled-up on seniority basis and remaining 61 posts were filled-up as per the LDE.

14. Mr. Ete, learned Additional Advocate General, Arunachal Pradesh, again reiterates that in view of the direction passed by this Court in WP(c) 61(AP)2014 and WP(c) 329(AP)2014, to promote the petitioners of those cases, the State Respondents had to consider all the eligible candidates for

promotion as there were many constables who were senior to the petitioners of those cases and who had not approached this Court.

15. Learned Senior Additional Advocate General, Arunachal Pradesh, further submits that due to the peculiar situation that has arisen due to passing of the judgment & order dated in WP(c) 61(AP)2014 and WP(c) 329(AP)2014, the impugned order dated 15.07.2016 has been issued. He further submits that petitioners did not take part in the 2008 examination and some of them were not born in the cadre at the time the said examination took place. He submits that as such, the petitioners do not have the *locus standi* to file the present case and make a challenge to the impugned order dated 15.07.2016. He further submits that said respondents have the power to take a policy decision. He further submits that the Courts cannot act as an appellate authority over a government policy.

16. Mr. Ete, learned Additional Advocate General, Arunachal Pradesh, further submits that there is a provision for allowing the State Government to relax the Rules of 2010. He submits that the use of the words 'as an one-time measure' in the impugned order dated 15.07.2016, *read with* the orders passed by this Court in WP(c) 61(AP)2014 and WP(c) 329(AP)2014, as well as in WP(c) 558(AP)2014, implies that the State Government had invoked the provision of Rule 6 of Rules of 2010. He further submits that while disposing of WP(c) 558(AP)2015, this Court had directed the State Respondents to consider the representation of the petitioners. Accordingly, the same was considered. He, thus, submits that there is no illegality in the issuance of the order dated 15.07.2016, whereby the merit list made in pursuance to the 2008 examination would be used for promoting constables to the post of Head Constable in the quota reserved for promotion through LDE.

17. Mr. Ratan, learned counsel for the private Respondents, submits that only 3(three) petitioners were eligible to participate in 2008 examination for promotion to the post of Head Constable. He also submits that the petitioners do not have any right to be considered for promotion to the vacancies that

occurred prior to 2015 as most of the petitioners were appointed only in July, 2012.

18. I have heard the learned counsels appearing for the parties at length.

19. The admitted facts of the case are that out of 122 vacancies that were to be filled-up in the year 2008, as per the Rules of 1987, 61 vacancies were to be filled-up on the basis of normal seniority basis and 61 vacancies were to be filled-up through LDE. The LDE was held in the year 2008 and 61 vacancies were filled-up. The 61 vacancies to be filled on the basis of seniority, was also filled-up.

20. It is clear that once a panel/waiting list has been used up for filling-up the post of vacancies, the validity or life of the said panel/waiting list is extinguished. On a perusal of the Standing Order No. 28 dated 06.09.1991, which is admitted to still hold the field for the purpose of conducting the LDE, I find that Clause 4.3 of the Standing Order No. 28 states that a waiting list will be valid for a period of 6(six) months. Thus, the above fact makes it clear that there could not have been any waiting list beyond 6(six) months period.

21. In the case of *Man Singh v. Commissioner, Garhwal Mandal, Pauri & ors.*, reported in **(2009) 11 SCC 448**, the Apex Court had held that ordinarily, the life of a select list is one year.

22. The Apex Court, in the case of *Rakesh Kumar Tripathi & ors. v. Union of India & ors.*, reported in **(2004) 13 SCC 476**, has held that it is well-established that the life of a waiting list does not survive indefinitely.

23. In the present case, the question of survival of the waiting list or merit list is a non-issue, inasmuch as, the vacancies that were notified to be filled-up, has been filled up in pursuance to the 2008 examination.

24. In the case of *Rakhi Ray & ors. v. High Court of Delhi & ors.*, reported in **(2010) 2 SCC 637**, the Apex Court has held that it is a settled legal proposition that vacancies cannot be filled-up over and above the number of vacancies advertised as recruitment of candidates in excess of the notified

vacancies is a denial and deprivation of the constitutional rights under Article 14 *read with* 16(1) of the Constitution of India, of those persons who acquired eligibility for the post in question in accordance with the statutory rules, subsequent to the date of notification of vacancies. It also held that when notified vacancies are filled-up, the process of selection comes to an end. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service anymore. This has also been stated by the Apex Court in ***Surinder Singh v. State of Punjab*** reported in ***(1997) 8 SCC 488***.

25. In the present case, the State Respondents have relied upon the order dated 15.07.2016, to plead that the merit list in pursuance to the 2008 examination can hold the field for promotion to the post of Head Constable which became vacant from the year 2010 onwards.

26. With respect to the respondent counsel's contention that the impugned order dated 15.07.2016 implies the relaxation of Rule 6 of Rules of 2010, the said submission cannot be accepted by this Court in view of the fact that there has been no decision made for relaxation of Clause 6 of Rules of 2010. There is nothing in the impugned order dated 15.07.2016 to indicate that the Rule 6 of the Rules of 2010 has been invoked.

27. Also due to the fact that the earlier vacancies in the post of Head Constable had been filled-up on the basis of LDE held in the year 2008, in pursuance to the Rules of 1987, the merit list made in pursuance to the 2008 examination has to be deemed to be exhausted/ceased to exist. The process for selection to the vacancies that arose prior to 2008 and that were filled-up in pursuance to the 2008 examination, having come to an end, the State Respondents are bound to fill-the vacancies that occurred from the year 2010 to 2016 as per the Rules of 2010. Thus, a fresh LDE has to be held by the State authorities.

28. Contention of the learned counsels for the respondents that the writ petitioners cannot be considered for promotion to the vacancies that occurred prior to 2015 as most of the petitioners were appointed in July 2012, cannot be accepted by this Court.

29. The question of candidates having the required regular years of service would have to be considered on the date on which a Notification is issued for filling-up of vacancies. As no Notification has been issued for filling-up all the vacancies that arose prior to today, as per the Rules of 2010, this Court is of the view that the petitioners would be eligible to be considered for all posts that are required to be filled-up on the basis of LDE examination to be held as per the Rules of 2010.

30. With regard to the contention of Mr. K. Ete, learned Additional Advocate General, Arunachal Pradesh, that the State has the power of classification, which to some degree is bound to produce some inequality, this Court does not deny the soundness of the said submission. However, the attempt by the State Government to act upon a merit list made on the basis of a 2008 examination, for filling-up for vacancies that arose between 2010 and 2016, is patently arbitrary and the same has to be set aside. The process of selection made earlier in the year 2008, had come to an end when the vacancies were filled-up and as such, the merit list had ceased to exist.

31. With regard to the further submission of the learned Senior Additional Advocate General, Arunachal Pradesh, that the Court should not sit in appeal over a policy decision of the State Government, this Court finds that the said policy decision is arbitrary, inasmuch as, the State Cabinet has not considered the Rules of 2010 and the laws laid down by the Apex Court while issuing the impugned order dated 15.07.2016.

32. In the case of *Union of India v. Dinesh Engineering Corporation*, reported in **(2001) 8 SCC 491**, the Apex Court has held that a policy decision if taken without considering the relevant facts can only be termed as an arbitrary decision. The Apex Court further held that if the policy decision is arbitrary, the same is violative of Article 14 of the Constitution of India.

33. In view of the reasons stated above, this Court finds that the impugned Cabinet decision dated 11.06.2016, W.T. Message dated 25.07.2016 and order dated 15.07.2016, are arbitrary and they are hereby set aside.

34. The respondents are to ensure that a LDE is conducted to fill-up the vacant posts of Head Constable that arose from 2010 onwards and which are to be filled-up by way of LDE as per the Rules of 2010. The petitioners should also be allowed to take part in the selection process, as permitted by the Rules of 2010.

35. With the above directions and observations, all these 3(three) writ petitions stand allowed and they are accordingly disposed of.

36. In view of the above, the connected interlocutory applications, 2(two) in nos., also stand disposed of accordingly.

37. No costs.

JUDGE

Bhask