

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

W.P.(C) No.162 (AP) of 2017

1. GyandhiLapung,
S/o MeraLapung, Papu Hill, near PWD, S.E. Office, Naharlagun, A.P.
2. TachinSidisow,
S/o. MialiSidisow, PG Block, Room No. 48, NERIST, Nirjuli, Itanagar, A.P
3. Dani Taker,
S/o. DaniTanyo, PG Block, Room No. 105, NERIST, Nirjuli, Itanagar, A.P
4. NarangTado,
S/o. N. Takhe, PG Block Room No. 136, NERIST, Nirjuli, Itanagar, A.P.
5. RukjeshMarbom,
S/o. J. Marbom, PG Block, Room No. 114, NERIST, Nirjuli, Itanagar, A.P
6. HageTatu,
S/o. H.Chatung, PG Block, Room No. 37, NERIST, Nirjuli, Itanagar, A.P
7. Tate Tadeng,
S/o. TahoTadeng, PG Block, Room No. 37. NERIST, Nirjuli, Itanagar, A.P
8. TajumDoni,
S/o. R.Doni, PG Block, Room No. 28 NERIST, Nirjuli, Itanagar, A.P

.....Petitioners

-Versus-

1. The Arunachal Pradesh Public Service Commission,
represented by the Secretary Public Service Commission,
Government of Arunachal Pradesh, Itanagar, A.P.
.....Respondent
2. The Principle Chief Conservator Forest, Department of Environment
and Forest, Government of Arunachal Pradesh, Itanagar, A.P.

.....Performa Respondent

**- BEFORE -
THE HON'BLE MR. JUSTICE S. SERTO**

For the Petitioners	: Mr. P.Taffo, Mr. B.Sonam, Mr. J. Ringh, Ms.S.Wanglat, Mr. T.Lamgu, Mr. S.Tsering, Adv.
For the respondent No. 1	: Mr. N.Pada, SC. APPSC
For the State respondents	: Mr. D.Soki, Addl. Sr. Govt. Adv.
Date of hearing & Date of Judgment	: 30.05.2018

JUDGMENT & ORDER (ORAL)

Heard Mr. P.Taffo, learned counsel appearing for the petitioners and also heard Mr. N.Pada, learned Standing counsel for the APPSC/respondent No.1 and Mr. D.Soki, learned Addl. Sr. Government Advocate appearing for the respondent No.2.

2. On 12.04.2016, the Government of Arunachal Pradesh, Department of Environment & Forest, Itanagar, wrote a letter to the Secretary, Arunachal Pradesh Public Service Commission, requesting for conducting recruitment to 33 posts of Range Forest Officer under the Government of Arunachal Pradesh, as per the recruitment rule. On receipt of the same, the respondent No.4 i.e. the Arunachal Pradesh Public Service Commission, issued an Advertisement No. APPSC-R(B)/04/2016, dated 09.01.2017, inviting application from eligible candidates for recruitment to 33 posts of Range Forest Officer. The relevant portions of the advertisement for the purpose of deciding this case are reproduced here below;

**“ARUNACHAL PRADESH
PUBLIC SERVICE COMMISSION
ITANAGAR”**

No. PSC-R(B)/04/2016

Dated Itanagar, the 9th January, 2017**ADVERTISEMENT**

Applications in prescribed form are invited from citizens of India for filling up of 33(Thirty three) posts of Range Forest Officer (RFO), Group-B (Gazetted) in the pay Scale of Rs. 9300-34800/- + Grade Pay Rs. 4200/- per month plus other allowances as admissible to Arunachal Pradesh Govt. employees from time to time. Out of 33 posts, 32 posts are reserved for APST candidates and 1(one) post un-reserved (i.e for open competition). Further, out of 33 posts 16 posts are reserved for Forestry Graduates and 17 posts are reserved for other Science Graduates. Selection of post will be made from combined merit list. Vacancy position and reservation is subject to variation.

1. **AGE** : The candidates must have attained 18 years of age and should not be more than 30 years of age as on **10.02.2017**. However, the upper age limit is relaxable in accordance with the orders issued by the Govt. of Arunachal Pradesh from time to time.
2. **EDUCATIONAL QUALIFICATION** :Candidate applying for the post must be a Bachelors degree in Science/Engineering/Agriculture/ Forestry from a recognized university with at least one of the following subjects:

(i)	AGRICULTURE	(xii)	MECHANICAL ENGINEERING
(ii)	BOTANY	(xiii)	ENVIRONMENTALSCIENCE
(iii)	CHEMISTRY	(xiv)	FISHERIES
(iv)	COMPUTER APPLICATIONS	(xv)	FORESTRY
(v)	COMPUTER SCIENCE	(xvi)	GEOLOGY
(vi)	AGRICULTURE ENGINEERING	(xvii)	HORTICULTURE
(vii)	CHEMICAL ENGINEERING	(xviii)	MATHEMATICS
(viii)	CIVIL ENGINEERING	(xix)	PHYSICS
(ix)	COMPUTER ENGINEERING	(xx)	STATISTICS
(x)	ELECTRICAL ENGINEERING	(xxi)	VETERINARY SCIENCE
(xi)	ELECTRONIC ENGINEERING	(xxii)	ZOOLOGY

(The standard of these subjects shall be that of a Bachelor's Degree)"

3. After the issuance of the advertisement given above, the petitioners felt aggrieved by the following sentence of the advertisement

which debarred them from competing for the remaining 17 posts; "further, out of 33 posts, 16 posts are reserved for the Forestry graduates and 17 posts are reserved for other Science graduates". Therefore, the petitioners approached the respondent No. 1 to allow them to apply and compete for the 17 posts of Range Forest Officer besides the 16 posts reserved for Forestry graduates. Since their request was not considered, the petitioners has approached this Court praying for issuance of appropriate writ or order or direction directing the respondent No.1 to modify the advertisement dated 09.01.2017, by issuing appropriate corrigendum so that they are eligible for competing in the remaining 17 posts of Range Forest Officer which is stated to be reserved for the other Science graduates.

4. Mr. P. Taffo, learned counsel for the petitioners by referring to the 2nd Amendment of the recruitment rules of the Arunachal Pradesh, Forest Service Rules, 1999, framed and notified under Article 309 of the Constitution of India, particularly para-2(1) of the amendment notified under notification No. FOR.259/E-(A)/2013/3862, dated 24.02.2016, and Rule-6(2)(a) of the principle Act submitted that vacancies in the post of Range Forest Officer under the Government of Arunachal Pradesh has to be reserved for direct recruitment as follows; i.e., 50% for those who have bachelor's degree in Forestry Science and 50% for those who have degree in Science. He also submitted that those who have degree in Science or Science graduates includes those graduates who possess bachelor degree in Forestry as mentioned in Rule- 6(2)(a) of the principle Act. The learned counsel also submitted that if 50% of the vacancies has to be reserved only for other Science graduates excluding graduates in Forestry Science, the reservation made for the Forestry graduates would be rendered meaningless.

The learned counsel further submitted that reservation of 50% of vacancies in the post of Range Forest Officer was made for graduates in Forestry Science since the post of Range Forest Officer is technical and

specialized post for maintaining forest and environment in the State, however, it does not mean that their eligibility to compete is confined to only 50% of the vacancy, but extends also to the remaining 50%. The learned counsel also submitted that the Commission being only a recruitment body it has to act according to the recruitment rules, it can neither add nor subtract from it.

In support of his submission, Mr. P. Taffo referred to the judgment passed by this Court in the case of **Tripura Public Service Commission –versus- Partha Sarathi Dutta & Another**, reported in **2008(3) GLT 200**, para-20. The contents of the paragraph referred to are reproduced herein below;

“20. Admittedly, the Public Service Commission is a consultancy body/authority. It does not possess the power of legislature nor it has the power to add in the rule. Even if there is any deficiency in the Recruitment Rule, this power is left to the wisdom of the Legislature only. The impugned action of the Commission in the instant case prescribing and incorporating the word ‘experience’ only to be meant in respect of the experience earned/gathered by way of regular employment only and to the exclusion of the part time employment. In our considered opinion it is not authorized by the scheme of the Constitution as prescribed under Article 315 or Article 320 of the Constitution. The State has also accepted the position and has not come up to challenge the impugned judgment.”

5. Mr. N. Pada, learned Standing counsel for the APPSC/respondent No.1 submitted that the intention of the law makers is very clear from both the principle rules and the 1st Amendment and 2nd Amendment of the same. The learned counsel submitted that it was on the demand of the Forestry graduates that 50% of the vacancies in the post of Range Forest Officer were earmarked for Forestry graduates and the other 50% was earmarked for other Science graduates. Therefore, the claim of the petitioners has no basis or reasons whatsoever. The learned counsel also submitted that the judgment cited by the learned counsel for the petitioners has no application in the present case since the facts and circumstances of the two cases are different from each other.

Mr. N. Pada also submitted that the Special Secretary, Department of Environment & Forest had clarified, vide his letter dated 17.06.2016, that 16 posts are to be reserved for Forestry graduates and 17 posts are open to other Science graduates. Therefore, there is no ambiguity in the advertisement issued and there is nothing wrong in the decision of the respondent No.1 in not allowing the petitioners to compete for the 17 posts of Range Forest Officer.

In support of his submission, Mr. Pada, learned Standing counsel referred to the judgment of the Hon'ble Supreme Court passed in the case of **Andhra Pradesh Public Service Commission –versus- BalojiBadhavath & Others**, reported in **(2009) 5 SCC 1**, para-23. The contents of the paragraph are reproduced here below;

“23. The appellate Commission which has been constituted in terms of Article 315 of the Constitution of India is bound to conduct examination for appointment to the services of the State in terms of the Rules framed by the State. It is, however, free to evolve procedure for conduct of examination. While conducting the examination in fair and transparent manner as also following known principles of the fair play, it cannot completely shut its eyes to the constitutional requirements of Article 335 of the Constitution of India, which reads as under;

“335. Claims of schedule castes and schedule tribes to services and posts— The claims of the members of the schedule castes and the schedule tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of State;

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the schedule castes and the schedule tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or a State.”

6. There is no dispute between the parties on the principle of law that the public service commission has to go by the recruitment rules framed for a particular post i.e. Range Forest Officer in this case. The only

difference is on the interpretation of the relevant recruitment rules i.e. the Rule-6(2)(a) of the principle Act and para-2(1) of the 2nd Amendment notified, vide Notification No. FOR.259/E-(A)/2013/3682, dated 24.02.2016, of the Department of Environment & Forest, Government of Arunachal Pradesh. The provisions of the Rule-6 (2)(a) of the principle Act and the relevant portions of the 2nd Amendment are reproduced here below;

(i). **6. Competitive examination:-**

(2) *The education and other qualifications as prescribed from time to time by the Director of Forests Education, Ministry of Environment and Forests, Govt. of India, for direct recruitment and admission to SFS Colleges of the Govt. of India are as below:-*

(a). Educational qualification :- *The candidates must possess a Bachelor's Degree in Science from any recognized University or institution with at least one of the following subjects :-*

Agriculture, Botany, Chemistry, Physics, Mathematics, Statistics, Zoology, Forestry, Geology, Horticulture, Engineering (Agri/Chemical/Civil/Electrical/Electronics/Mechanical).

Honours certificate holder of any of the Govt. run Forest Rangers Colleges provided they are sponsored by the Govt. of Arunachal Pradesh”.

(ii). Notification No. FOR-259/E-(A)/2013/3570, dated 23/2/2016.

In exercise of powers conferred by proviso to Article 309 of the Constitution of India, the Governor of Arunachal Pradesh is pleased to make the following rules further to amend the Arunachal Forest Services Rules, 1999, namely;-

“2. In the Arunachal Pradesh Forest Service Rules, 1999 (hereinafter called as the Principle Rules);

(1) *For the existing entry in Rule 5(1) and after the word ‘and’, the following entries shall be inserted, namely;-*

Out of 50% of the vacancies available for direct recruitment, 50% of the vacancies shall be filled up from Bachelor of Sciences in Forestry Graduates from a recognized university and 50% from other science graduates who possess degree in subjects as provided in rule 6(2)(a).”

7. Before I go any further, I may also mention here the submission of Mr. D. Soki, learned Addl. Sr. Government Advocate appearing for the respondent No.2.

It is submitted by the learned counsel that the Government is in agreement with interpretation as given by the petitioners i.e. 50% of the vacancies in the post of Range Forest Officer should be reserved specifically for those persons who had graduated in Forestry Science and 50% of the vacancies i.e. 17 posts in this case should be reserved for graduates in Science which includes graduates in Forestry. This submission of the learned Addl. Sr. Government Advocate is supported by the affidavit filed on behalf of the State respondents and the annexures appended thereto, which are nothing but clarifications given by the concerned authorities of the Department on the query made by the respondent No. 1.

8. Now coming to the interpretation of the two provisions, reading together of Rule-6(2)(a) of the principle rules and para-2(1) of the 2nd Amendment of the rules makes it clear that 50% of the total vacancies has to be reserved for Forestry graduates and the other 50% of the vacancies has to be reserved for other Science graduates which includes those graduates in Forestry Science. This I say so because in the 2nd Amendment at para-2(1), it is stated very clearly that from other Science graduates who possess degree in subject as provided under Rule-6(2)(a). Now, if we read Rule-6(2)(a) of the principle rules, it is stated therein that the candidates must possess a Bachelor's degree in Science from any recognized University or institution with at least one of the following subjects, wherein among all the Science subjects Forestry is also mentioned. In other words, the word other Science graduates includes graduates in Forestry Science, I agree with the submission of the learned counsel for the petitioners that this interpretation can only be a reasonable interpretation because if the Forestry graduates are debar from competing in the remaining 50% reserved for other Science

graduates, the reservation would be rendered meaningless. Rather, it would be to the disadvantage of the graduates in Forestry Science which can never be the intention of the makers of the rules. As stated earlier, since the parties are in agreement on the principle of law that the Commission i.e. the respondent No.1 has to abide by the recruitment rules, they should abide by the same and allowed the petitioners to compete in 50% of the vacancies i.e. 17 posts besides, the 16 posts already reserved for them.

In consequence, the respondent No.1 is hereby directed to issue an appropriate corrigendum in the advertisement.

With this, the writ petition is disposed.

JUDGE

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