

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

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

WP(C) 186 (AP) 2011

1. **Shri Tagum Tatak,**
S/o Tanyong Tatak
Village: Riga, P.O: Boleng
East Siang District, A.P.

2. **Shri Dunggoli Pangkem,**
S/o Kugkeng Pangkem
Village; Karko, P.O: Jenggeng
District: Upper Siang, A.P.

3. **Shri Takeng Pali,**
S/o Late Tagom Pali
Village: Bogu, P.O: Pagou
District: West Siang
Arunachal Pradesh.

4. **Shri Nyabom Tasar,**
S/o Late T. Tasar
C/o T. Lego
Qtr. No. ; 319, "E" Sector
Naharlagun, PO & PS Naharlagun,
Arunachal Pradesh.

.....Petitioners.

-VS-

1. **The State of Arunachal Pradesh,**
Through the Chief Secretary
Government of Arunachal Pradesh
Itanagar.

2. **The Commissioner-cum-Secretary Tax & Excise,**
Government of Arunachal Pradesh
Itanagar, PO & PS Itanagar,

Papumpare District,
Arunachal Pradesh.

3. **The Deputy Commissioner,**
(Legal) Tax & Excise,
Govt. of Arunachal Pradesh, Itanagar.

..... Respondents.

By Advocates:

For the petitioners: Mr. M. Pertin,
Mr. T. Leriak,
Mr. K. Dabi,
Mr. L. Gongo,
Mr. J. Dulom,
Mr. O. Saroh,
Mr. D. Tatak,

For the respondents: Mr. S. Tapin, Senior Government Advocate,
Arunachal Pradesh,

Ms. L. Hage, Government Advocate.

**:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Date of hearing : **19.12.2017.**

Date of Judgment : **11.01.2018.**

JUDGMENT & ORDER

Heard Mr. M. Pertin, learned senior counsel assisted by Mr. D. Tatak, learned counsel appearing for the petitioners and Mr. S. Tapin, learned Senior Government Advocate assisted by Ms. L. Hage, learned counsel appearing for the State Respondents.

2. The petitioners' case precisely is that pursuant to an advertisement, dated, 07.03.2008, to fill up the posts of Assistant Inspector (Tax & Excise) along with other posts, issued by the respondent No. 2, the Commissioner-cum-Secretary to the Government of Arunachal Pradesh, Tax & Excise, the petitioners applied for the said posts. The advertisement did not carry the number of vacant posts to be filled up. The petitioners appeared in the written and viva-voce tests as per plan of recruitment examination set out in the advertisement itself. Thereafter, the result was declared selecting 24 (twenty four) candidates for the post of Assistant Inspector (Tax & Excise) as per merit and the petitioners were placed in serial nos. 25, 26, 27 & 28 of the waiting list, but they were not given appointment due to shortage of posts. Later on, the petitioners came to know through an RTI application that the Government of Arunachal Pradesh under the department of Tax & Excise had accorded sanction of 30(thirty) posts of Assistant Inspector (Group-C) on 30.05.2007 and accordingly, advertisement was issued on 07.03.2008, to fill up the post.

3. The petitioners have contended that the advertisement was made on the basis of the recruitment rules viz. 'The Assistant Inspector (Tax & Excise) Recruitment Rules (Amendment) 1999'. As per Rule 2, 90% posts are to be filled up through direct recruitment, through a written test followed by viva-voce test and 10% by promotion from the feeder cadres. According to the petitioners, out of 30 (thirty) vacant posts of Assistant Inspector (Tax & Excise), none of the departmental feeder cadres were promoted and as such, 6 (six) posts meant for promotion from the feeder cadre were left to be filled up. In the meantime, the respondent authority illegally appointed 04(four) persons to the post of Assistant Inspector (Tax & Excise) without holding any selection process.

4. The regularization of service of the aforesaid 04(four) persons vide order, dated 26.11.2007, was challenged by a group of unemployed youths in WP(C)No.86(AP)2009. This Court by an order, dated, 22.12.2009, quashed and set aside the aforesaid regularization of service order with a further direction to fill up the aforesaid 04 (four) posts of Assistant Inspector (Tax & Excise), by initiating regular recruitment process as required under the Rules within a period

of four months from 04.01.2010 and till such time, the regular appointments are made the private respondent Nos. 4 to 7 in the said proceeding were allowed to continue in service. Against the aforesaid judgment and order, passed in WP(C)No.86(AP)2009, the 04(four) illegally appointed persons had preferred a Writ Appeal No.12(AP)2010, wherein the present petitioners impleaded themselves as respondents. In the meantime, they came to know from the affidavit-in-opposition of the State respondent that those 04(four) persons were from promotional quota and thus, 06(six) posts are still lying vacant. Hence, the petitioners have prayed for a direction to the respondent authorities to fill up the aforesaid remaining 06(six) vacant posts of Assistant Inspector (Tax & Excise) from the panel of waiting list prepared on 02.06.2010, and to extend the validity of the waiting list so made till final disposal of the instant petition.

5. The State respondents No. 1 to 3 have contested the petitioners' contentions by filing an affidavit-in-opposition contending, *interalia*, that out of 30(thirty) posts, 20(twenty) were filled up through direct recruitment and the remaining 06(six) had been reserved on 10% reservation promotion i.e. 3(three) posts, 5% i.e. 02(two) posts for meritorious persons from the sports quota and 3% i.e. 1(one) post reserved for physically handicapped person. These 06(six) posts of reserved quota cannot be filled up from the waiting list. It has been further contended that there is no vacant post as claimed by the petitioners and that candidates of the waiting list can only be appointed against sanctioned vacant posts if a selected candidate does not join or has resigned or by reason of death or for any other reason rendering the post vacant and further, that they cannot be appointed against any future vacancy. Hence, prayed to dismiss the petition.

6. Perusal of the amended Rule 2 of 1999, which came into force w.e.f. 14.10.1999, for recruitment to the post of Assistant Inspector (Tax & Excise), it is noticed that rules provide for 10% by promotion and 90% by direct recruitment on the basis of merit adjudged through a written test followed by viva-voce test as shown in break up – (i) General English- 100 marks, (ii) General Knowledge-100 marks, (iii) Mathematics-100 marks and (iv) Viva-voce-

50 marks, Total – 350 marks. The relaxation of rules has been provided as extracted herein below-

"5. Power of relax – Where the Governor of Arunachal Pradesh is of the opinion that it is necessary or expedient so to do, he may by order for reasons to be recorded in writing and in consultation with the Arunachal Pradesh Selection Board/Public Service Commission, relax any of the provisions of these Rules with respect to any class or category of persons."

7. The advertisement, dated 07.03.2008, vide Annexure-1 reveals that the respondent No. 2, Commissioner-cum-Secretary (Tax & Excise), invited applications for filling up the post of Assistant Inspector (Tax & Excise) and others. The aforesaid advertisement, vide annexure-1 did not mention about the reservation quota and also the number of posts to be filled up. Be that as it may, the authority selected 24(twenty four) candidates after holding a competitive examination for appointment to the post of Assistant Inspector (Tax & Excise) through direct recruitment. The writ petitioners 04(four) in number were placed in the waiting list which remained valid for a period of 01(one) year. It is noticed from the Annexure-3 the order, issued by the respondent No. 2, dated 10.05.2007, that there were 30 (thirty) newly created posts of Assistant Inspector (Group-C), although the advertisement does not have any reference to those posts. From the order, dated 22.12.2009, it appears that 04(four) persons were appointed to the post of Assistant Inspector (Tax & Excise) without holding any recruitment test as per rule and as such, their regularization in service was turned down and set aside with directions as stated above.

8. According to Mr. M. Pertin, learned senior counsel for the petitioners as the post of 04(four) Assistant Inspector (Tax & Excise) have fallen vacant by virtue of the aforesaid order of this Court, the petitioners whose names were placed in the waiting list still survives and therefore, they should be directed to be appointed against those post. There is however, no document to show that

the aforesaid 04(four) posts have fallen vacant following this Court's order, dated 22.12.2009, passed in WP(C)No.86(AP)2009. It is obligatory on the part of the appointing authority to fill up the vacant post as per the vacancy position notified in the advertisement adhering to the reservation policy of the State. Mere placing of the petitioners' names in the wait list does not give them an indefeasible right to be appointed against any post which they claim to be vacant, but denied by the authority.

9. In WP(C)No.348(AP)2010 (Khoda Sanjay Vs. The State of A.P. & Ors), this Court directed the State respondent authority to refrain from appointing person of the wait listed candidates and if any additional/future vacancies are required to be filled up, the respondent would initiate fresh recruitment process in accordance with the rules in force. In the instant case, the authority did not even notify the number of vacancies to be filled up and as such, it cannot be inferred that any post now lying vacant to be filled up from the wait list of the petitioners, the validity of which has never been extended or renewed after it was published.

10. Consequently, **the writ petition stands dismissed**. No cost.

Cha Gang

JUDGE