

**IN THE GAUHATI HIGH COURT  
[THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND  
ARUNACHAL PRADESH]**

**ITANAGAR BENCH  
NAHARLAGUN**

1. **WP (C) 609 (AP) 2017**

**1. Rubha Chapo,**

S/o Late Rubha Taluk  
R/o PO Damin, PS Koloriang,  
District Kurung Kumey, Arunachal Pradesh.

**2. Chello Hache,**

S/o Shri Chello Tajik,  
R/o Village-Vade, PO Sarli,  
PS Koloriang, District Kurung Kumey,  
Arunachal Pradesh.

**3. Pisa Andila,**

S/o Shri Pisa Kachi  
R/o Village-Wabia, P O Sarli,  
PS Koloriang, District – Kurung Kumey,  
Arunachal Pradesh.

**4. Yangfo Karling,**

S/o Mr. Yangfo Tajik  
R/o Villahe-Raktepu, PO Sarli,  
PS Koloriang, District- Kurung Kumey,  
Arunachal Pradesh.

**5. Bidik Achung,**

S/o Shri Bidik Tamar  
R/o Huba, PO Daming, PS Koloriang,  
District Kurung Kumey, Arunachal Pradesh.

**6. Takam Jhony,**

S/o Shri Takam Hano  
R/o Village – Langba, PO Palin, PS Palin,  
District - Kara Dadi, Arunachal Pradesh.

**7. Dolang Soka,**

S/o Shri Dolang Tassar,  
R/o Nirjuli, Anyas Rayo Colony,  
District Papumpare, Arunachal Pradesh.

**8. Milli Nani,**

S/o Shri Milli Effa  
Resident of Village: Milli, PO Sarli,  
PS Koloriang,  
District Kurung Kumey, Arunachal Pradesh.

.....Petitioners.

Advocates for the Petitioner:

Mr. S. Biswas,  
Mr. M. Saikia,  
Mr. G. J. Saikia,  
Mr. T. Baruah,  
Mr. T. Chutia,  
Mr. R. Borgohain,  
Mr. M. Basumatary,  
Mr. D. K. Medhi,  
Mr. T. Tapak,

**-VS-**

**1. The State of Arunachal Pradesh,**

Through the Chief Secretary to the Government  
of Arunachal Pradesh, Itanagar.

**2. The Secretary,**

Rural Works Department,  
Govt. of Arunachal Pradesh, Itanagar.

**3. The Secretary,**

Department of Administrative Reforms and  
Personnel, Govt. of Arunachal Pradesh,  
Itanagar.

**4. The Secretary,**

Arunachal Pradesh Public Service Commission,  
Itanagar.

**5. The Superintending Engineer,**

Rural Works Circle-cum-Co-ordination, Itanagar  
Govt. of Arunachal Pradesh.

..... Respondents.

Advocates for the Respondents:

Mr. S. Tapin, Senior Government Advocate,

**2. WP (C) 565 (AP) 2017**

**1. Shri Kipa Tagak,**

S/o Kipa Ekiong  
R/o Qtr No.10, Type-II, Co-operative Line 25  
Near Higher Secondary School, Polo Colony,  
Naharlagun, PO 7 PS Naharlagun,  
District Papumpare, Arunachal Pradesh.

**2. Shri Gyamar Rup,**

S/o Gyamar Lotak  
R/o Qtr No.10, Type-II, Co-operative Line 25  
Near Higher Secondary School, Polo Colony,  
Naharlagun, PO 7 PS Naharlagun,  
District Papumpare, Arunachal Pradesh.

**3. Shri Yorum Achung,**

S/o Yorum Takio  
R/o Qtr No.24, Vivek Vihar, Itanagar,

PO & PS Itanagar, Papumpare District,  
Arunachal Pradesh.

.....Petitioners.

Advocates for the Petitioner:

Mr. R. Sonar,  
Mr. L. Tapa,  
Ms. H. Rinya,  
Mr. P. Tatam,  
Ms. T. Devi

**-VS-**

**1. The State of Arunachal Pradesh,**

Through the Chief Secretary to the Government  
of Arunachal Pradesh, Itanagar.

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Rural Works Department,  
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Personnel, Govt. of Arunachal Pradesh,  
Itanagar.

**4. The Secretary,**

Arunachal Pradesh Public Service Commission,  
Itanagar.

**5. The Superintending Engineer,**

Rural Works Circle-cum-Co-ordination, Itanagar  
Govt. of Arunachal Pradesh.

..... Respondents.

Advocates for the Respondents:

Mr. K. Ete, Senior Additional Advocate General,  
Mr. D. Soki, learned Addl. Sr. Govt. Advocate,  
Mr. N. Pada, SC (APPSC),

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

Date of hearing : **20.12.2017.**

Date of Judgment & Order : **11.01.2018.**

**JUDGMENT AND ORDER**

The above 2(two) writ petitions are being related to the same cause of action, propose to dispose of the same by this common judgment and order.

Heard Mr. S. Biswas, learned counsel for the petitioners and Mr. S. Tapin, learned Senior Government Advocate appearing for the State respondents.

Also heard Mr. R. Sonar, learned counsel appearing for the petitioners in WP(C)565(AP)2017.

I have gone through the case laws cited by the parties.

**2.** By these applications under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the impugned notification issued vide office Memo No.AR-148/2016, dated 04.07.2017, by the respondent No. 1- the Chief Secretary to the Govt. of Arunachal Pradesh, Itanagar and also the order No.SRWD-19/2004(Vol-I)Pt/286, dated 07.07.2017, issued by the respondent No. 2, the Secretary, Rural Works Department, Govt. of Arunachal Pradesh consequent upon a cabinet decision, dated 17.02.2017, in regard to the new method of conduct of the examination for recruitment of all Group-B non-Gazetted post inclusive the Junior Engineer (Civil) in the Rural Works Department, Govt. of Arunachal Pradesh, in consultation with the Arunachal Pradesh Public Service Commission (For short 'APPSC) and in consequence thereto, the advertisement issued by the Department of Rural Works Department vide No.RWC/CORD/Estt/ADVT-582/2017-18, dated 22.02.2017, for recruitment to the post of Junior Engineer (Civil) has been cancelled without effecting amendment to the existing recruitment Rules.

**3.** The respondent No.2, the Secretary, Rural Works Department, Govt. of Arunachal Pradesh in his affidavit-in-opposition has taken the stand that the recruitment rules of 1994 prescribe only for departmental promotion committee to be constituted by the State government. Accordingly, the state govt. has authorised the Arunachal Pradesh Public Service Commission to conduct the Group-B non-Gazetted posts in terms of APPSC (Limitation of Functions) Regulation 1988. The Government has decided to prescribe a Selection Committee which will be the Arunachal Pradesh Public Service Commission (APPSC) and thereby to avoid violation of Articles 14, 16 and 309 of the Constitution of India. It has been further contended that the govt. can make rules and policy in accordance with the enabling provisions of the Constitution of India vide the Cabinet Decision, dated 17.02.2017, the Recruitment Rules, 1994 and the APPSC (Limitation of services) Rules 1998 have been amended and notified by two notifications dated 04.07.2017 vide annexure A & B series. It has been further contended that by the aforesaid Cabinet decision, the Government of Arunachal Pradesh has entrusted the recruitment of all Group-B posts to the Arunachal Pradesh Public Service Commission (APPSC) and subsequently, the State government has issued notification vide No.AR148/2016, dated 04.07.2017, authorizing the Arunachal Pradesh Public Service Commission (APPSC) to conduct recruitment of Group-B (non-Gazetted) posts and thereby dispensed the practice of recruitment by the appointing authority from conducting further recruitment examination. Accordingly, the advertisement for recruitment of Junior Engineer vide No.RWC/COORD/Estt/ADVT-582/2017-18, dated 22.02.2017, was cancelled by order vide No.SRWD-19/2004(Vol-I)Pt., dated 06.07.2017.

**4.** The respondent No. 3, the Secretary, Department of Administrative Reforms and Personnel, Govt. of Arunachal Pradesh, in his affidavit-in-opposition has averred that as per the minutes of the meeting of the Cabinet held on 07.02.2017, the cabinet approved the proposal that recruitment of Group-B non-Gazetted, Group-C and other Multi Tasking Ministerial posts shall be conducted by the Arunachal Pradesh Public Service Commission (APPSC) and accordingly, approved the amendment of Regulation 3 of Arunachal Pradesh Public Service Commission (Limitation of

Functions) Regulation, 1998. In pursuance of the aforesaid cabinet decision a notification dated 02.07.2017 was issued to give effect to the aforesaid amendment of Regulation 3 and authorised the Arunachal Pradesh Public Service Commission (APPSC) to conduct the recruitment examination of all the Group 'B' (Non-Gazetted post under the Government of Arunachal Pradesh, in the interest of greater benefit of the public by way of ensuring fair and transparent recruitment by the Arunachal Pradesh Public Service Commission (APPSC).

**5.** Mr. S. Biswas, learned counsel appearing for the petitioners submitted that after creation of various posts by the Government of Arunachal Pradesh, vide order, dated 15.02.2017, the Governor accorded approval for direct recruitment to the 66 posts of Junior Engineer (C) in Group-'B' (Non-Gazetted) vide No.SKWD-142/2016-17, dated 17.02.2017 and pursuant thereto, the respondent No. 5, the Superintending Engineer, Rural Works Circle, Itanagar issued an advertisement vide RWC/Cord/Estt/Advt.-582/2017-18, dated 22.02.2017, for 60 number of posts. Mr. Biswas submitted that the writ petitioners being the unemployed eligible diploma holders applied for the posts and received admit cards, on 31.05.2017, for appearing in the recruitment test scheduled to be held on 08.07.2017 and 09.07.2017, but 3(three) days before the scheduled date of examination, all of a sudden, the department of Administrative Reforms, Arunachal Pradesh issued the impugned Notification, dated 04.07.2017 dispensing with the practice of conducting recruitment by the Appointing Authorities and entrusted the APPSC with the responsibility of conducting the examination relating to recruitment of all Group-'B' (Non Gazetted) posts under the Government of Arunachal Pradesh ostensibly for fair and transparent conduct of recruitment process. According to Mr. Biswas, pursuant to the aforesaid Notification, dated 04.07.2017, by an order, dated 06.07.2017, the aforesaid advertisement, dated 22.02.2017, for recruitment of Junior Engineers was cancelled, although no amendment was done to the existing the Junior Engineer Recruitment Rules, 1994 which provided no such recruitment procedure.

**6.** According to Mr. Biswas, the learned counsel, the purported Cabinet decision, dated 07.02.2017, which is an executive decision, cannot

override the existing Rules framed under Article 309 of the Constitution of India which have the force and sanctity of law. Mr. Biswas further submitted that under Article 162 of the Constitution, the government can only issue notification to the extent the legislature of the state has power to legislate. Therefore, according to Mr. Biswas, the aforesaid impugned executive order is liable to be cancelled. In this regard, Mr. Biswas has relied upon the ratio of the judgment of the Constitutional Bench of the Apex Court rendered in ***B. N. Nagarajan Vs. State of Mysore***, reported in ***(1996) 2 SCR 682*** which has been consistently followed in the catena of subsequent judgments inclusive in the case of ***Management of the Federation of Indian Chambers of Commerce and Industry Vs. Workman, Shri R. K. Mittal***, reported in ***(1972) 1 SCC 40***. Mr. Biswas emphatically submitted that when the recruitment Rules came into force in the year 1994, the Executive order, issued, thereafter, cannot make the provisions non-enforceable and until suitable amendments are made in those Rules, the same shall remain in force. Referring to the ratio of the judgment of the Apex Court in ***Union of India & Ors. Vs. Somasundaram Viswanath & Ors.***, reported in ***(1989) 1 SCC 175***, Mr. Biswas further submitted that if there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under the proviso to Article 309 of the Constitution of India shall prevail. In support of his contentions, Mr. Biswas has relied upon the following decisions-

1. (1990) 3 SCC 157, N. T. Devin Ketti & Ors Vs. Karnataka Public Service Commission & Ors.
2. (1991)1 SCC 544, A. K. Bhathagar & Ors. Vs. Union of India & Ors.
3. (2014) 8SCC 644, Public Service Commission Uttaranchal Vs. Jagdish Chandra Singh Bora & Anr.
4. AIR 1957 SCC 912, State of Uttar Pradesh Vs. Manbodhan Lal Srivastava.

7. Mr. K. Ete, learned Senior Additional Advocate General, Arunachal Pradesh submitted that the basic question posed in this writ proceeding is

whether the State in exercise of authority vested under Article 309 of the Constitution of India may make Rules governing induction, recruitment of persons to the services and can cancel the examination to give effect to the government policy. Mr. Ete submitted that there is nothing to prevent the Government from issuing administrative instructions on matters upon which the statutory Rules are silent, because Article 309 is subject to other provisions of the Constitution and subject to that the government can regulate the recruitment method to the State services. According to Mr. Ete, undoubtedly, by making an application for State services, pursuant to an advertisement, the candidate does acquire a right to be considered for selection in terms of the advertisement and the relevant Rules as they existed on the date of the advertisement for recruitment, however, there is no constitutional bar against determination of an agency and entrustment to such agency, responsibility for smooth conduct of the examination for recruitment as it is a matter of government policy. Mr. Ete further submitted that the government by the impugned notification, dated 04.07.2017, has not brought any changes in the Recruitment Rules, 1994, but only entrusted the recruitment agency in public interest, which will be the APPSC under Article 320 of the Constitution of India, by way of supplementing to the Rules. According to Mr. Ete, the Recruitment Rules, 1994 does not specifically prescribe any Selection Authority and as such, by the impugned Notification, dated 04.07.2017, issued under Article 166 of the Constitution, the Government of Arunachal Pradesh has sought to rationalize the recruitment procedure in the State by giving effect to the Cabinet decision, dated 07.02.2017. Mr. Ete, learned Senior Additional Advocate General has relied upon the following decisions-

1. (1982) 3 SCC 341, I. J. Divakar & Ors. Vs. Govt. of Andhra Pradesh & Anr.
2. (2010) 1 SCC 756, Edukanti Kistamma (dead) through Lrs. & Ors. Vs. S. Venkatareddy (dead) through Lrs. & Ors.
3. AIR 1992 SC 749, Dr. P. K. Jaiswal Vs. Ms. Debi Mukherjee & Ors.

**8.** Mr. R. Sonar, learned counsel appearing for the petitioners in WP(C)No.565(AP)2017 submitted that by the impugned Notification, dated 04.07.2017, issued pursuant to the impugned cabinet decision by the respondent No. 1– the Chief Secretary to the Government of Arunachal Pradesh, whereby the APPSC has been authorized to conduct the recruitment of all Group-B (Non-Gazetted) post under the Government of Arunachal Pradesh violated and suppressed the provisions of the Junior Engineer Recruitment Rules, 1994, duly framed under Article 309 of the Constitution of India. Therefore, cancellation of the advertisement for recruitment of Junior Engineers, before the scheduled examination was illegal and liable to be quashed as the right to appear in examination by the writ petitioners has been infringed.

**9.** Perusal of Rule 3 of the Junior Engineer Recruitment Rules, 1994 provides that the method of recruitment, age limit and other qualifications etc. for the post of Junior Engineers is subject to the schedules 5 to 14 of the aforesaid Rules. The Rules do not provide for constitution of any recruitment committee. Therefore, the Government of Arunachal Pradesh in its impugned Cabinet decision, dated 07.02.2017, communicated through the impugned Notification, dated 04.07.2017, after having received the consent of the Governor of Arunachal Pradesh, as state policy, handed over all the recruitment of the Group-'B' (Non-Gazetted) posts to the APPSC abolishing the present practice of conducting recruitment by the Appointing Authorities themselves so as to ensure transparency and fairness in the process of recruitment.

**10.** The Chief Minister being the Head of the Government, it is well settled, has been authorized to place before his Cabinet any matter concerning the business of the government and the state to best serve the interest of the people of the State, therefore, any decision adopted by the State cabinet by way of State policy cannot be questioned on technical ground unless the same is found to be apparently arbitrary or in violation of the fundamental rights of the citizens guaranteed by the Constitution of India.

**11.** Pursuant to the aforesaid policy decision of the State, the respondent No. 2- the Secretary, Rural Works Department, Government of Arunachal Pradesh vide order, dated 06.07.2017, cancelled the advertisement No.RWC/Coord/Estt/Advt-582/2017-18, dated 22.02.2017, for recruitment of Junior Engineers, under the old practice. Therefore, it is not a fact that by the aforesaid Notification, dated 04.07.2017, the Government of Arunachal Pradesh supplemented the existing Recruitment Rules, 1994 as the Rules do not provide specifically for method of recruitment by a particular forum, but for direct recruitment by the department itself and consequently, the Notification, dated 04.07.2017, being not beyond the purview of Article 309 and well within due exercise of the extent of executive power of the state, the cancellation of the scheduled examination for departmental recruitment of the Junior Engineers by order, dated 06.07.2017, was not illegal.

**12.** Consequently, **the above writ petitions stand dismissed.** No cost.

**JUDGE**

Cha Gang