

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH

Appeal From
Writ Petition (Civil)

W.P. No. 348 (AP) 2010

Shri Kheda Sanjoy & 1 Amr
-Versus-
State of AP & 18 Ors.

Appellant
Petitioner.

Respondent
Opposite Party.

Counsel for the Appellant
Petitioner.

G. Josak
Mr. K. Ete, Amicus Curiae

Counsel for the Respondent
Opposite Party.

CIACAP
Mr. J. Hussain For R-889.

Noting by Officer or Advocate (1)	Serial No. (2)	Date (3)	Office note, reports, orders or proceeding with signature (4)

after proper advertisement.

-AND-

IN THE MATTER OF:-

1. Shri Khoda Sanjoy S/o Shri Khoda Tamang, resident of village Amji, P.O Palin P.S Sangram, District Kurung-Kumey, Arunachal Pradesh.
2. Shri Gumku Maga, S/o Lt. Gumku Epak, resident of Village Dui, P.O Palin P.S

Sangram, District Kurung-Kumey,
Arunachal Pradesh.

---Petitioners

(Common Cause)

-VERSUS-

1. The State of Arunachal Pradesh,
represented by the Chief Secretary,
Govt. of Arunachal Pradesh, Itanagar.
2. The Commissioner/Secretary Public
Work Department, Govt. of Arunachal
Pradesh, Itanagar.
3. The Secretary Hydro-Power, Govt. of
Arunachal Pradesh, Itanagar.
4. The Secretary, Urban Development
and Housing Department, Govt. of
Arunachal Pradesh, Itanagar.
5. The Superintending Engineer (Co-ord),
Public Work Department, Govt. of
Arunachal Pradesh, Itanagar.
6. The Superintending Engineer (Co-ord),
Hydro- Power, Govt. of Arunachal
Pradesh, Itanagar.
7. The Director- Cum- Chief Engineer
Urban Development and Housing
Department, Govt. of Arunachal
Pradesh, Itanagar.
8. The Commissioner/ Secretary,
(Education), Govt. of Arunachal
Pradesh, Itanagar.
9. The Director School Education Govt.
of Arunachal Pradesh, Itanagar.
10. The Secretary (Power)
Govt. of Arunachal Pradesh, Itanagar.

11. The Commissioner /Secretary Tax & Excise, Govt. of Arunachal Pradesh, Itanagar.
12. The Secretary, Water Resource Development Department, Govt. of Arunachal Pradesh, Itanagar.
13. The Superintending Engineer (Co-ord) WRD, Govt. of Arunachal Pradesh, Itanagar.
14. The Secretary Public Health Engineering and Water Supply Department, Govt. of A.P, Itanagar.
15. The Superintending Engineer (Co-ord) Public Health Engineering and Water Supply Department Govt. of A.P, Naharlagun
16. The Secretary Rural Development Department, Govt. of Arunachal Pradesh, Itanagar.
17. The Commissioner Home, Govt. of Arunachal Pradesh, Itanagar.
18. The Secretary (R.W.D) Govt. of A.P, Itanagar.
19. The Superintending Engineer (Co-ord) R.W.D Govt. of A.P, Itanagar.

-----Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE HRISHIKESH ROY**

19.1.2011

The petitioners who qualified as Graduate Engineers in the year 2006 and 2007 respectively, are aggrieved by diminished appointment opportunities to Government posts, because of the peculiar practice of certain Works Departments, to make recruitments in future vacancies, beyond the posts advertised, by creation of lengthy waiting lists.

2. As the Counsels for the petitioners were absent on consecutive dates, the Court requested for assistance of Mr. K. Ete and accordingly submissions from the Amicus Curiae has been heard. The State Authorities are represented by Mr. R.H. Nabam, learned Senior Government Advocate.

3. The petitioners have referred to the practice followed in 4 departments where engineers are being appointed beyond the advertised vacancies by unauthorized operation of wait listed candidates list.

4.1 For instance, the Public Works Department's advertisement was issued on 1.4.2008 to fill up 10 vacancies and after preparation of select list for the advertised 10 posts, a waiting list of 55 candidates was also prepared. According to the information furnished to the petitioners under the *RTI Act*, appointment to 43 candidates from the 55 wait listed candidates were given even after the advertised 10 posts were filled up from the regular select list. The validity of the waiting list was thereafter extended for a period of 6 months or till constitution of the DPC, by Notification dated 30th April 2010.

4.2 The Department of Urban Development and Housing similarly issued an advertisement on 24.6.2008 advertising, inter alia, 3 posts of Assistant Urban Programme Officers (AUPO) where Civil Engineering Graduates were qualified to apply and eventually 9 additional appointments were made by the



department, beyond the 3 advertised posts of AUPO. By Notification dated 5.1.2010 the waiting list of 26 candidates were notified to be valid for a period of one year, with the information that appointment will be made from the said waiting list to the post(s) which become available, during the validity period of Notification dated 5.1.2010.

4.3 The Department of Hydro Power Development likewise issued an advertisement on 17.8.2009 for filling up 11 posts of Jr. Engineer (Civil) and the said department notified the select list of 16 through Notification dated 17.5.2010. The department also prepared a waiting list of 22 candidates for filling up future vacancies.

4.4 By advertisement dated 15.9.2006, the Rural Works Department invited applications for 17 posts of Jr. Engineer (Civil) and select list of 32 and a waiting list of 60 candidates, was notified against the 17 advertised vacancies. Eventually appointments were given to 32 candidates and the petitioners apprehend that future vacancies are likely to be filled up from amongst the waiting list 60 candidates.

5.1 In the counter affidavit filed by the Public Works department on 22.12.2010, it is averred that apart from preparing a list of 10 candidates in order of merit for the advertised vacancies, 55 candidates were notified in a waiting list as because creation of future posts of J.E. for undertaking the National Highway works was expected. It is also averred that the validity of the waiting list was extended for a period of 6 months through extension Notification dated 30.4.2010.

5.2 In the counter affidavit filed by the Rural Works Department on 22.12.2010, no denial is made on the allegation of excess appointments. However it is averred that the validity of the waiting list did not continue beyond the permissible limit of 1 year 6 months and the said list automatically ceased to be in force, after expiry of the said period.

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5.3 In the counter affidavit of the Hydro Power Development Department filed on 13.12.2010, it is averred that 16 candidates were enlisted for appointment as J.E.(C) in the 11 advertised vacancies. Furthermore, 22 candidates were enlisted in a waiting list considering the vacancies which are likely to be created in near future. It is specifically averred in this department's counter affidavit that as the process for recruitment takes about 5/6 months, the waiting list was prepared to take care of the emergent needs of the department for extra men power. The validity of the wait listed candidates are contended to be for a period of 1 year.

6. From the averments in the affidavits filed by the 3 Works Departments and in the absence of any denial of the Urban Development and Housing Department, the allegation made by the petitioners of recruitment being made to future vacancies beyond the advertised posts have been confirmed. The counter affidavits acknowledge that waiting list(s) were prepared for future posts to meet the exigencies of works in the concerned departments.

7. Mr. K. Ete, learned Amicus Curiae submits that the action of the departments to appoint persons beyond the advertised vacancies is impermissible and he places reliance on the Supreme Court judgment in *Mukul Saikia vs. State of Assam* reported in (2009) 1 SCC 386 in support of his contention. The Supreme Court in this case, after taking note of several earlier decisions had held that filling up of the vacancies over and above the number of vacancies advertised is violative of *Articles 14 & 16* of the *Constitution* and the State can't appoint more than the number of advertised posts.

8. The practice followed by the Works Departments in the State of Arunachal Pradesh for empanelling and appointing persons to future vacancies by operating lengthy waiting lists, obviously infringes the rights of the aspirants for Government posts guaranteed by *Articles 14 & 16* of the

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Constitution. Accordingly it is held that such practice followed by the respondent departments are contrary to the applicable laws in the matter of recruitment.

9. Having held thus, the respondents are hereby ordered to refrain from making any more appointment(s) from amongst the wait listed candidates. If any additional/future vacancies are required to be filled up, the respondents would initiate a fresh recruitment process, in accordance with the Rules in force.

10. The writ petition stands allowed with the above direction.

11. The Court acknowledges the assistance rendered by Mr. K. Ete, learned Counsel to decide the matter, in the absence of the engaged lawyers.


JUDGE

Datta