

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

**ITANAGAR PERMANENT BENCH**

**WA 13(AP)2017**

1. North Eastern Regional Institute of Science and Technology, represented by its Director, NERIST, PO/PS-Nirjuli, Dist-Papum pare, Arunachal Pradesh.
2. The Registrar, North Eastern Regional Institute of Science and Technology PO/PS-Nirjuli, Dist-Papum pare, Arunachal Pradesh.
3. The Selection Committee constituted for selection of Associate Professor headed by Director, North Eastern Regional Institute of Science and Technology, in the Department of Agricultural Engineering through its Chairman, PO/PS-Nirjuli, Dist-Papum pare, Arunachal Pradesh.

*.....Petitioner*

By Advocates:

Mr. Ajin Apang, Sr. Adv.

**- Versus -**

1. Dr. Prabhanjan Kumar Pranav,  
S/o Shri Gauri Kant Jha, presently serving as Assistant Professor,  
Department of Agriculture Engineering, NERIST, PO-Nirjuli, Papumpare  
District, Arunachal Pradesh Arunachal Pradesh.

*.....Respondents*

2. The Union of India, Ministry of Human Resource Development through the  
Director (T), Department of Higher Education, Shastri Bhavan, C-Wing,  
New-Delhi.
3. The University Grants Commission, Bahadur Shah Zafar Marg, New Delhi,  
represented by the Chairman.

*.....Proforma respondents.*

By Advocates:

Mr. D. Panging, learned Adv.

**::BEFORE::**

**THE HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO  
THE HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Date of hearing : 09.11.2017  
Date of Judgment : 13.12.2017

## **JUDGMENT AND ORDER (CAV)**

*(Ajit Bothakar, J.)*

Heard Mr. A. Apang, learned Sr. counsel appearing on behalf of the appellant-North Eastern Regional Institute of Science and Technology (for short, appellant-NERIST) and Mr. D. Panging, learned counsel appearing for the sole respondent.

2. The substance of the challenge in this Writ Appeal is against the direction given on 04.11.2015 (Annexure-2) in the connected writ petition viz. WP(C) No.86(AP)2015, whereby, the learned Single Judge directed the NERIST to appoint the writ petitioner as Associate Professor, in the Department of Agricultural Engineering. The writ petitioner was not recommended by the 9-member selection panel and yet, direction was issued for his appointment because, additional vacancy was available. Currently, the writ petitioner is serving as an Assistant Professor, but he applied for consideration to the higher post of Associate Professor, in terms of advertisement No. 2/2014 (Annexure 4) of the NERIST. Against the order dated 04.11.2015, the NERIST had filed the Review Petition No. 04(AP)2015, but the same was dismissed on 03.03.2016, by the learned Single Judge. The primary challenge now in this Writ Appeal is against the direction given by the learned single Judge for appointment of the writ petitioner (respondent No. 1, herein).

3. Having regard to the power conferred under Clause 2(2) of Chapter V A of the Rules applicable for writ appeals in the High Court, and also taking into consideration the decision in ***Bussa Overseas and Properties Private Limited and Another vs. Union of India & anr.*** reported in **(2016) 4 SCC 696**, the instant writ appeal has been entertained by this Court vide order, dated 05.12.2016.

4. For ready reference, the impugned judgment and order, dated 04.11.2015, passed by the learned Single Judge in WP(C) 86(AP)2015 is extracted, as under:-

*"2. The facts and circumstances giving rise to this petition are that, the Registrar, North Eastern Regional Institute of Science and Technology (NERIST, in short) issued an advertisement being No.2/2014 to fill up various posts of Professor, Associate Professor and Assistant Professor. Amongst the posts advertised for Associate Professor, 10 posts were from General category candidates, 12 for OBC, 6 for SC, 3 for ST, PWD-1 (UR) PWD-*

1(OBC) candidates. The petitioner and three others being otherwise eligible applied for the post of Associate Professor in Agricultural engineering. There were only four posts in the Department of Agricultural Engineering and as only four candidates had applied for the post, the petitioner was also expecting his name would be recommended for appointment to the post but only two candidates namely, Dr. Aditi Bhadra and Dr. Arnab Bandandyopadhyay were recommended for appointment. The petitioner who was placed third in merit position was not recommended for appointment to the post, hence, the writ petition.

3. It is submitted by Mr. D Panging, learned counsel for the petitioner that out of 10 posts advertised for the general category candidates the institute has selected total six candidates in the cadre of Associate Professor including two in Agriculture Engineering, two in Forestry, one in Civil Engineering and one in Mechanical Engineering.

4. Respondent Nos.1, 3 and 5 in their affidavit in opposition have averred that the Institute had vacancy in Agricultural Engineer Department two posts for General Candidates one for SC and One for OBC. Moreover, the Institute reserves the right to fill or not fill any or all the vacancies advertised. As there was only two posts were for General Category candidates, the name of the petitioner was not recommended as General Category candidates for the two posts were already selected.

5. It transpires from Annexure-A that the University Grants Commission had issued circular dated 17.06.2014 for effective implementation of the reservation policy and it has been mentioned that a reservation roster should be maintained by the universities which has to be updated at regular intervals and such roster is to be prepared cadre wise and not Department wise.

6. The respondents have not disclosed that any such roster had been maintained by the NERIST. The tentative roster Annexure-I has been prepared just four days before the interview after issuing call letters for interview.

7. In the case of **R.K.Sabharwal & Others Vs. State of Punjab & ors., AIR (1995) 2 SCC 745**, it has been observed in para 6 as under:-

*"The expression 'posts' and 'vacancies', often used in the executive instructions providing for reservations, are rather problematical. The word 'post' means an appointment, job, office or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office, The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation."*

8. In the case of **M. Nagaraj and Others Vs Union of India (UOI) & Others (2006) 8 SCC 212** the constitutional Bench of Apex Court held in para 58 as follows:

*"In our view, appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that upper ceiling limit of 50% is not violated, Further, roster has to be post-specific and not vacancy based. With these introductory facts, we may examine the scope of the impugned constitutional amendments."*

9. *In this case 33 posts of Associate Professor were advertised and out of 33 posts 10 posts meant for General Category candidates. In the advertisement, there was no whisper of any department wise reservation for the post of Associate Professor.*

10. *The respondent authorities after the publication of the advertisement and just before the interview divided the reservation preparing the tentative roster department wise. It is settled that the selection criteria or rules of the game cannot be changed when the game is under process (see Sengsime A. Sangma and Others Vs State of Meghalaya and Others 2014 (5) GLT 409)*

11. *In view of the aforementioned discussion as held by Apex Court as well as the relevant guidelines issued by the UGC, the percentage of reservation has to be worked out in relation to number of posts which form the cadre strength and therefore, the respondent NERIST ought to have filled up all the posts of Associate Professor advertised as per the advertisement. Out of ten posts for General Category candidates when only 6 posts have been filled up and 4 are still lying vacant, the petitioner who otherwise is eligible for the post must be appointed.*

12. *This Court, therefore, directs the respondent authorities to appoint the petitioner as Professor in the Department of Agriculture Engineer, NERIST."*

**5.** The appellant-NERIST preferred the Review Petition No. 08(AP)2015 praying for review of the said judgment and order, dated 04.11.2015, passed in WP(C)86(AP)2015 and the learned Single Judge dismissed the said review petition, vide order, dated 03.03.2016, which is extracted herein below:-

*"By filing this application, the petitioner has sought for review of the judgment and order dated 04-11-2015 passed by this Court in WP(C No. 86 (AP) 2015.*

*It is submitted by Mr. A. Apang, learned Standing Counsel of NERIST that they failed to submit the minutes of the Roasters Committee Meeting in relation to the post of Associate Professor before this Court. Since the document was not placed before this Court, the judgment and order has been passed against the applicant/NERIST, which needs to be reviewed.*

*This Court in WP(C) No. 86 (AP) 2015 has observed that the respondents (applicant) have not disclosed that any such roster had been*

*maintained by the NERIST and the tentative roster was prepared just before 4 days after issuing call letters for interview.*

*In the said case 33 posts of Associate Professor were advertised and out of 33 posts, 10 posts are meant for General Category candidates, there was no whisper of any reservation for the post of Associate Professor.*

*The scope of review is very limited and the power of review can be exercised by the Court in the event discovery of new and important matter, which could not be placed before this Court despite of exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made.*

*In the case of **Inderchand Jain (Dead) Through LRS. V. Motilal (dead) though LRS**, reported in **(2009) 14 SCC 663**, it was held in para 10, as follows:-*

*"10. It is beyond any doubt or dispute that the review Court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order."*

*This Court passed the judgment after considering all aspects and all issues raised by the parties. The applicant has failed to assign any reason as to why any important document could not be placed before this Court. The argument placed today will lead to rehearing of the matter which cannot be allowed by review Court.*

*Therefore, this Court finds that this review application cannot be entertained by this Court. Accordingly, it is dismissed and disposed of".*

**6.** Mr. Apang, learned senior counsel, submitted, inter alia, that this writ appeal has been preferred by the appellant-NERIST praying for setting aside and quashing of the impugned judgment and order, dated 04.11.2015, passed in WP(C)86(AP)2015 along with the order, dated 03.03.2016, passed by the learned Single Judge in Review Pet. 08(AP)2015, as the learned Single Judge had taken a wrong presumption that the writ petitioner-respondent No. 1 is an eligible candidate to be appointed in the post and did not clarify the observation that the writ petitioner-respondent No. 1 was otherwise eligible for the post of Associate Professor. Mr. Apang, also submitted that the learned Single Judge has wrongly refused to examine the minutes of the selection proceedings showing that the writ petitioner-respondent No. 1 was not selected/recommended for the said post by the selection committee merely on technical ground. He further contended that the learned Single Judge committed error in law by directing the

appellant-NERIST to appoint the respondent No. 1/writ petitioner in a post though he failed to be selected/recommended in the selection process.

**7.** Mr. Apang, learned senior counsel for the appellant NERIST also contended that the learned Single Judge has acted on a wrong presumption that the writ petitioner-respondent No. 1 had secured the 3<sup>rd</sup> position in the merit list of the selection whereas the selection committee selected/recommended only 2(two) candidates for appointment and there was no merit list as claimed by the petitioner/respondent No. 1 and the issues raised in the said writ petition being of such nature which could be properly decided only by examining the connected records and the said records having been furnished by the appellant-NERIST in the Review Petition, the learned Single Judge ought to have examined those records and reviewed the impugned judgment and order. Learned senior counsel further contended that the appellant-NERIST disclosed the reasons as to why the relevant records could not be produced at the time of hearing the Review Petition before the learned Single Judge and the documents annexed with the said review petition clearly showed that much prior to the issuance of the Advertisement, the NERIST had constituted a Committee on 05.07.2014 to work-out the Reservation Rosters for appointment of the faculties for existing vacancies in order to ensure the SC/ST/OBC Quotas as per the Guidelines of G.I., Department of Personnel and Training under O.M. No. 36012/2/96-Estt. (Res.), dated 02.07.1997, which records the learned Single Judge ought to have examined to render justice. Mr. Apang also contended that the percentage of reservation was worked-out in relation to the number of posts i.e. the cadre strength and that the reservation was never made Department-wise as observed in the impugned judgment and order in the said review petition.

**8.** Mr. Apang, further submitted that the posts-based Rosters for the advertised posts being the most important document to be considered for proper adjudication of the writ petition and those documents having been placed before the learned Single Judge through the Review petition, ought to have considered the same; and as such, the impugned judgment and order is bad in law as well as in facts being contrary to the records relating to the minutes of the Roster Committee Meeting and the posts-based Rosters as well as the minutes of the selection committee.

**9.** Mr. Panging, learned counsel for respondent No. 1 submitted that the Advertisement No. 02/2014 issued by the appellant-NERIST had invited applications from candidates for filling up various posts including the teaching faculty inter alia 4 (four) posts of Associate Professor in the Department of Agricultural Engineering and the respondent No. 1, who is otherwise eligible and interested applied for the post of Associate Professor. The respondent No. 1 appeared along with other 3 (three) candidates in the *viva-voce* test held on 20.12.2014 at NIRD, Guwahati and performed well. However, only 2 (two) candidates were recommended by the selection committee for their appointment to the posts of Associate Professor and the respondent No. 1 was placed in 3<sup>rd</sup> position in the merit list and his name was not recommended against the remaining 2(two) vacant posts. According to Mr. Panging, the learned Single Judge having considered the relevant documents placed by the respondent No. 1/writ petitioner and the appellant-NERIST, rightly allowed the writ petition directing the appellant NERIST to appoint the respondent No. 1/writ petitioner against the vacant post of Associate Professor in the Department of Agricultural Engineering in NERIST. It has been further submitted by the learned counsel that the learned Single Judge rightly rejected the Review Petition filed by the appellant-NERIST as the documents which were sought to be considered by the Court were not placed during hearing of the writ petition and as such, those documents were not a part of the record of the said writ petition. Mr. Panging further submitted that the appellant-NERIST had suppressed the alleged material documents for perusal of this Court and therefore, the scope and ambit of a review petition being very limited, as already observed in the impugned order, dated 03.03.2016, passed in the said Review Petition, the same was not entertained at a belated stage.

**10.** In support of his contentions, Mr. Apang, learned senior counsel for the appellant NERIST, has relied on the following decisions of the Apex Court as well this Court:

1). *(1991) 3 SCC 47 [Shakarsan Dash v. Union of India]*

*Wherein the Apex Court held that candidate included in the merit list has no indefeasible right to appointment even if a vacancy exists, but State while filling up the vacancies has to act bona fide and not arbitrarily.*

2). *1996(2) GLT 605 [Smt. Anjana Roy(Das) v. State of Assam & ors.]*

*Wherein a single Judge of this Court held that writ Court should be absolutely slow and circumscribed in interfering with the selection made by an expert body if the selection process is fair and or not.*

- 3). 2002(2) GLT 435 [*Joseph Syiemlieh v. State of Meghalaya & ors.*]

*Wherein a single Judge of this Court held that mere empanelment in a select list does not confer upon a person any indefeasible right to be appointed.*

**11.** On the other hand, Mr. Panging, learned counsel appearing on behalf of respondent No. 1, has relied on the following decisions on the following decisions of the Apex Court as well this Court:

- 1). (1990) 3 SCC 157 [*N.T. Devin Katti & ors. v. Karnataka Public Service Commission & ors.*]

*Wherein the Apex Court had held that where selection process initiated by issuing advertisement inviting applications, selection normally should be regulated by the rules or orders then prevailing.*

- 2). (2010) 3 SCC 104 [*Ramesh Kumar v. High Court of Delhi & anr.*]

*Wherein the Apex Court reiterating the view adopted in K. Manjusree v. State of A.P., reported in (2008) 3 SCC 512, held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over.*

- 3). (1995) 2 SCC 745 [*R. K. Sabharwal & ors. v. State of Punjab & & ors.*]

*Wherein the Apex Court held that the cadre-strength is always measured by the number of posts comprising the cadre and right to be considered for appointment can only be claimed in respect of a post in a cadre. It was further held that the percentage of reservation has to be worked-out in relation to number of posts which form the cadre-strength.*

- 4). 2004(1) GLT 117 [*Tractor & Farm Equipment Ltd. v. Secretary to the Govt. of Assam, Dept. of Agriculture & ors.*]

*Wherein a Division Bench of this Court held that if two reasonable and logical views are possible, the view adopted by Single Judge should normally be allowed to prevail by the Division Bench.*

**12.** We have given our anxious consideration to the above grounds of appeal cited by the appellant NERIST *vis-à-vis* the contentions thoroughly made by the petitioner/ Respondent No. 1, herein. Upon due consideration of the matter in its totality, we find that the appellant NERIST has pleaded, in substance, by referring to the vital documents



relating to posts-based rosters of expert committee which existed prior to the advertisement of the posts and non-recommendation of the petitioner/Respondent No. 1 for the said post that it could neither be relied upon by them nor produced before the learned single Judge at the time of hearing of the writ petition i.e. WP(c) No. 86(AP)2015 owing to administrative problem of the Institute, to their disadvantage in the attending fact situation. We, therefore, cannot certainly approve such material omission on the part of the appellant NERIST to produce the vital documents in the context of the petitioner/respondent's legal grievances. However, it is also to be noted that Article 226 of the Constitution of India does not preclude the High Court from exercising the power of judicial re-examination of the case with a view to prevent miscarriage of justice to either of the parties to this proceeding. In our considered opinion, the appellant NERIST's aforesaid omission of placing the vital documents at the time of hearing of the said writ petition is neither a negligence falling below the standard of care recognized by any substantive law nor procedural law and the aforesaid omission eventually entailed non-consideration of the untendered documents by the learned Single Judge in determining the questions that arose in the original writ proceeding.

**13.** In the premises, we feel it expedient in the interest of justice to remand the matter to the learned Single Judge for fresh adjudication and consequently, the impugned judgement and orders are set aside and quashed. We make it clear that we have not expressed our opinion on the merit of the case.

**14.** There shall be no order as to costs.

**15.** Send down the relevant records forthwith.

**JUDGE**

**JUDGE**