

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C)211(AP)2015

1. Sri Mihin Tajang,
Son of Sri Mihin Talin
Village Tajang, P.O/P.S. Ziro
District Lower Subansiri (AP)
2. Sri Nani Chama
Son of Sri Nani Chala
Village Reru, P.O/P.S Ziro
District Lower Subansiri (AP)
3. Sri Pegmir Tayeng
Son of late Pegmir Tabin
Village Ripari
District Lower Subansiri (AP)
4. Smt. Millo Yama
D/o Sri Millo Chatung
Village Tajang, P.O/P.S Ziro
District Lower Subansiri (AP)

...Petitioners.

----Versus----

1. The State of Arunachal Pradesh
represented by the Chief Secretary,
Govt. of Arunachal Pradesh, Itanagar.
2. The Chief Engineer
Central Electrical Zone,
Department of Power,
Govt. of Arunachal Pradesh, Itanagar.
3. The Superintending Engineer(E),
A.P. Electrical Circle – V,
Govt. of Arunachal Pradesh, Ziro.

4. The Executive Engineer,
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
5. Miss Tapi Rina
C/o the executive Engineer,
Ziro Electrical Division, Ziro
Lower Subansiri District, (AP)
6. Smt. Bar Yedik
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District, (AP)
7. Smt. Murtem Yallar
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District, (AP)
8. Sri Tasen Liruk
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
9. Miss Jumpak Taye
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District, (AP)
10. Sri Hibu Kondi
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District, (AP)
11. Sri Guchi Ram
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District, (AP)
12. Sri Hibu Mali
C/o the Executive Engineer

- Ziro Electrical Division, Ziro
Lower Subansiri District, (AP)
13. Sri Bengia Nekum
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
14. Sri Dilip Sharma
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
15. Shri Likha Pekhi
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
16. Sri Rakhe Teni
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
17. Sri Tap Tal
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
18. Sri Boa Apo
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
19. Sri Likha Taje
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
20. Sri Nido Jirjo
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)

21. Sri Dumir Tedik
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
22. Md. S. Rehman
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
23. Smti. Kago Dumri
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
24. Sri Rakhe Tatum
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
25. Miss Hibu Natung
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
26. Smti. Hibu (Hage) Moni
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
27. Sri Nani Nobin
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
28. Sri C. K. Baisnab
C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)
29. Smti. Taba Yallum
C/o the Executive Engineer

Ziro Electrical Division, Ziro
Lower Subansiri District (AP)

30. Sri Toko Aga

C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)

31. Sri Kago Tapa

C/o the Executive Engineer
Ziro Electrical Division, Ziro
Lower Subansiri District (AP)

.....Respondents.

Advocate for the Petitioners: Mr. S. Koyang
Mr. H. Lampu

Advocate for the Respondents: Mr. L. Perme, Standing Counsel
Mr. T. Tagum
Ms. Hibu Usha
Mr. T. Eha
Mr. T. Tama

::: BEFORE :::
HON'BLE MR. JUSTICE NANI TAGIA

JUDGMENT AND ORDER (Oral)

23.07.2019

Heard Mr. S. Koyang, learned counsel for the petitioners and Mr. L. Perme, learned Standing counsel for the Department of Power, Arunachal Pradesh, representing respondents No. 3 and 4. Also heard Mr. T. Tagum, learned counsel for the private respondents No. 11, 13 to 22 and 28 to 30.

None appears for the other private respondents, although the names of the learned counsels have been shown in the Cause list.

2. This writ petition has been filed by the petitioners challenging the orders of the appointment as Work Charged Employees given to the respondents No. 5 to 31 on 18.12.2014 by the Superintending Engineer (E), A.P. Electrical Circle-V, Department of Power, Ziro, Govt. of Arunachal Pradesh, annexed as Annexure-V series to the writ petition.

3. Challenging the appointments of the respondents No. 5 to 9, the writ petitioners have contended that, although the appointments of the respondents No.5 to 9 have been stated to be made on the basis of an interview held on 03.11.2014 in the office of the Executive Engineer(Electrical), Ziro Electrical Division, Department of Power, Govt. of Arunachal Pradesh, but no such interview did actually was conducted and, therefore the appointments of the respondents No. 5 to 9 as Work Charge Employees are illegal.

4. With regard to the appointments of the respondents No. 10 to 31, it has been contended by the writ petitioners that, although there is a Notification dated 01.11.1996 issued by the Chief Engineer (Power), Department of Power, Govt. of Arunachal Pradesh, Itanagar, vide No. CE(P)/EWC/V/196/6331-46 regulating the manner and method of recruitment of Work Charged Employees indicating that the criteria or eligibility in number of years in casual service shall be decided by the Executive Engineer on the basis of vacancy and the principles of "Zone of Consideration" with a minimum of 2(two) years qualifying service as casual employee provides for 200 marks as a part of Trade Test, which have been further sub-divided as under:

(a) Personality Test - 100 Marks

b) Practical Test - 100 Marks.

Total 200 Marks.

5. Personality test have further been sub-divided into:

(a) Viva-Voce (Maximum)

(i) General Awareness - 10 Marks.

(ii) Trade/Technical Knowledge - 30 Marks.

(iii) Personality - 10 Marks.

50 Marks.

(b) Grace Marks (Maximum)

- (i) Seniority evaluation - 30 Marks.*
- (ii) General qualification - 10 Marks.*
- (iii) Technical qualification - 10 Marks.*
50 Marks.

6. The writ petitioners contends that the respondent authorities, while undertaking the recruitment of respondents No. 10 to 31 on 16.12.2014 have not adhered to the maximum marks of 200 that have been prescribed in the aforesaid notification, but rather in the present recruitment the selection have been made on the basis of 800 total marks, which is contrary to the notification regulating the recruitment of Work Charged Employees dated 01.11.1996 and, therefore, the same is illegal and needs to be interfered with.

7. A counter affidavit by the State respondents, namely; the respondents No. 3 and 4 have been filed, wherein, in Paragraph-5 of the said counter affidavits, the adoption of 800 marks instead of 200 marks have been explained as under:

- 1. "General Qualification - 10 marks*
- 2. Technical Qualification - 10 marks*
- 3. Seniority valuation - 30 marks*
- 4. General Intelligence - 25 marks (5 x 5 marks)*
- 5. Personality Test - 25 marks (5 x 5 marks)*
- 6. General Awareness - 50 marks (10 x 5 marks)*
- 7. Trade Knowledge - 150 marks (30 x 5 marks)*
- 8. Practical Knowledge - 500 marks (100 x 5 marks)*

.....
Total Maximum marks = 800 Marks."

8. Having delineated the breakup of 800 total marks as above, the respondents have, however, explained that as there were 5(five) Board Members in the interview, the respective marks were inflated by multiplying it with 5. After the marks were awarded by each of the Board Members, the average marks of maximum of 200 was only taken into account.

9. With regard to the appointments of respondents No. 5 to 9, it has been stated in Paragraph-7 of the counter affidavit filed by the respondents No.3 and 4, that the appointments to the respondents No.5 to 9 as Work Charged Employees were made on the basis of Trade Test held on 03.11.2014 in the office of the Chief Engineer (Power), Department of Power, Central Electrical Zone, Vidyut Bhawan, Itanagar, Govt. of Arunachal Pradesh. The appointments made to the respondents No. 5 to 9 are, however, stated to be against the Direct Recruitment Quota. However, it has not been stated by the respondents No. 3 and 4 in their counter affidavits that any advertisement inviting application for recruitment of Work Charged Employees in respect of the 5(five) posts, which have now been occupied by the respondents No. 5 to 9 were ever issued.

10. The respondents No.5 to 31 have also filed their counter affidavits, wherein apart from adopting the stand taken by the State respondents, the private respondents have also contended that the petitioners having participated in the selection process, cannot now, turn back and challenge the selection process just because they have not been selected.

11. With regard to the contentions of the writ petitioners that the appointments of the private respondents No. 10 to 31 having been made not in consonance with the Notification dated 01.11.1996, namely, within the total marks of 200, I find that, although the selection of the respondents No. 10 to 31 were made on the basis of 800 marks, but as have been explained in the counter affidavits as noted above, yet, the final selection was made on the basis of the average marks of the total marks of five Board Members, which eventually comes to the equivalent of 200 marks.

12. That being the position, I am of the view that the selection was made in substantial compliance and also in the spirit of the notification dated 01.11.1996. The learned counsel for the petitioners have also not been able to substantiate with the help of any known principles of law that the methodology adopted by the respondent authorities is *per se* contrary to the letter and spirit of the notification dated 01.11.1996.

13. In that view of the matter, with regard to the selection process adopted by the State respondents in so far as the selection of respondents No. 10 to 31, I do not find any glaring illegalities and, therefore, the appointments of the respondents No. 10 to 31 as Work Charged Employees needs no interference.

14. However, with regard to the appointments of the respondents No. 5 to 9, although the respondents No. 3 and 4 in their counter affidavit have sought to justify their appointments, on the ground, that the posts against which the respondents No. 5 to 9 have been appointed were the posts earmarked for a Direct Recruitment Quota and, therefore, the writ petitioners who are casual employees seeking promotion to the post of Work Charged Employees would have no grievances with regard to the appointment of the respondents No. 5 to 9 inasmuch as they have been appointed in the post which are meant for Direct Recruitment Quota.

15. Be that as it may, the respondent authorities have not indicated in their counter affidavits that the appointments of the respondents No. 5 to 9, who are stated to be made in the Direct Recruitment Quota were duly made after the posts have been put to a public notice. If the appointments of the respondents No. 5 to 9 have been made without any public advertisement, which have been admitted by the State respondents, the appointments of the respondents No. 5 to 9 cannot be sustained in law inasmuch as whenever any appointment is to be made to a public office, the respondent authorities are under an obligation to advertise the same putting it to the notice of the general public. Unless such an advertisement is made giving equal opportunity to all other eligible candidates; the appointments made without such advertisement would be contrary to the provisions of Article 4 and 16 of the Constitution of India.

16. In that view of the matter and for the reasons and discussions made herein above,

(i) the impugned appointment order dated 13.12.2014 issued in favour of the respondent No. 5, vide No. SE/APEC-V/EWC-6/2014-15/1561-64 by the Superintending Engineer (E), A.P. Electrical Circle-V, Department of Power, Ziro, Govt. of Arunachal Pradesh;

(ii) the impugned appointment order dated 18.12.2014 issued in favour of the respondent No. 6, vide No. SE/APEC-V/EWC-6/2014-15/1565-68 by the Superintending Engineer (E), A.P. Electrical Circle-V, Department of Power, Ziro, Govt. of Arunachal Pradesh;

(iii) the impugned appointment order dated 18.12.2014 issued in favour of the respondent No. 7, vide No. SE/APEC-V/EWC-6/2014-15/1557-60 by the Superintending Engineer (E), A.P. Electrical Circle-V, Department of Power, Ziro, Govt. of Arunachal Pradesh;

(iv) the impugned appointment order dated 18.12.2014 issued in favour of the respondent No. 8, vide No. SE/APEC-V/EWC-6/2014-15/1569-72 by the Superintending Engineer (E), A.P. Electrical Circle-V, Department of Power, Ziro, Govt. of Arunachal Pradesh; and

(v) the impugned appointment order dated 18.12.2014 issued in favour of the respondent No. 9, vide No. SE/APEC-v/EWC-6/2014-15/1573-76, issued by the Superintending Engineer (E), A.P. Electrical Circle-V, Department of Power, Ziro, Govt. of Arunachal Pradesh are hereby set aside and quashed.

17. The writ petition is **disposed of** in terms above.

18. No cost.

JUDGE

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