

## **IN THE GAUHATI HIGH COURT**

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

### **ITANAGAR BENCH**

### **WP(C)No. 206 (AP)/2015**

Mr. Nabam Budh

Son of Nabam Takia,

Resident of Village – Leporiang,

P/o – Sagalee, District – Papum Pare, Arunachal Pradesh

.....**Petitioner**

***By Advocates:***

***Mr. H. S. Kalsi, Mr. D. Goswami,***

***Mr. D. Nandi,***

### **-Versus-**

1. The Arunachal Pradesh Public Service Commission represented by its Chairman, Itanagar – 791111.
2. The Chairman, Arunachal Pradesh Public Service Commission, Itanagar – 791111.
3. The Secretary, Arunachal Pradesh Public Service Commission, Itanagar – 791111.
4. The Deputy Secretary Arunachal Pradesh Public Service Commission, Itanagar – 791111.
5. The State of Arunachal Pradesh represented by its Chief Secretary, E- Sector, Itanagar -791111.
6. The Chief Secretary to the Government of Arunachal Pradesh, E- Sector, Itanagar – 791111.
7. Board of Members of the interview Board of 28.05.2015 represented by the Secretary, Arunachal Pradesh Public Service Commission, Itanagar – 791111.
8. Smti Indira Tana (IAS), wife of Mr. Tana Tahin, C/O The Arunachal Pradesh Public Service Commission, Itanagar 79-1111.

9. Mr. Lelin Tayeng, C/O – Chief Engineer, WRD, Itanagar-791111.
10. Mr. Naresh Teli Comdir, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar – 791111.
11. Mr. Neelam Mama, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar – 791111.
12. Mr. Hillang Taju, C/O Chief Engineer, UD & Housing, Itanagar -791111.
13. Mr. Millo Ampj, C/O Chief Engineer, PHED, Itanagar -791111.
14. Mr. Bengia Taggu, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.
15. Mr. Tana Zoma, C/O Chief Engineer, PHED, Itanagar -791111.
16. Mr. Tad Logi, C/O Chief Engineer, PHED, Itanagar -791111.
17. Mr. Kago Sonia, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar – 791111.
18. Mr. Tallo Yamang, C/O Chief Engineer, RWD, Itanagar - 791111.
19. Mr. Gumken Ori, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.
20. Mr. Kongo Gyadi, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.
21. Mr. Miding Pertin, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.
22. Mr. Moji Padu, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.
23. Mr. Jorney Darang, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.
24. Bullo Rambo, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.
25. Jummy Taba, C/O Chief Engineer (Training & Coordination), APPWD, Itanagar -791111.

26. Nampy Bolon, C/O Chief Engineer (Training & Coordination), DHPD, Itanagar -791111.
27. Ringgong Bitin, C/O Chief Engineer (Training & Coordination), DHPD, Itanagar -791111.
28. Mum Tapak, C/O Chief Engineer (Training & Coordination), DHPD, Itanagar -791111.
29. Tumbom Angu, C/O Chief Engineer (Training & Coordination), DHPD, Itanagar -791111.
30. Pura Butang, C/O Chief Engineer (Training & Coordination), DHPD, Itanagar -791111.

Respondent Nos. 31 to 36 has been impleaded as respondent Nos. 31 to 36, vide order dated 21.01.2016 passed in MC(WP)11(AP)2016.

31. The Commissioner & Secretary, Water Resources Department, Government of Arunachal Pradesh, Itanagar.
32. The Commissioner & Secretary, Rural Works Department, Government of Arunachal Pradesh, Itanagar.
33. The Commissioner & Secretary, Arunachal Pradesh Public Service Commission, Government of Arunachal Pradesh, Itanagar.
34. The Commissioner & Secretary, UD & Housing Department, Government of Arunachal Pradesh, Itanagar.
35. The Commissioner & Secretary, PHED, Government of Arunachal Pradesh, Itanagar.
36. The Commissioner & Secretary, DHPD, Government of Arunachal Pradesh, Itanagar.

.....**Respondents**

**By Advocates:**

*Mr. T.T. Tara, AAG,*

*Ms. P. Pangu, Govt. Adv. For Resp. Nos.5,6, 31-36*

*Mr. N. Pada, SC, APPCS, for Resp. Nos.1-4 & 7*

*Mr. A. Apang, Sr. Counsel, for Resp. Nos.13,17-18 & 24*

*Mr. G. Tarak, for Resp. Nos.8,10,11,12 & 15.*

*Mr. D. Panging, for Resp. Nos. 19,21,23 & 26-30.*

**BEFORE**  
**THE HON'BLE MRS. JUSTICE DR. INDIRA SHAH**

**Date of Hearing : 30-05-2016**

**Date of Judgment and Order: 01-06-2016**

**JUDGMENT & ORDER (CAV)**

Heard Mr. D. Goswami, learned counsel for the petitioner and Mr. N. Pada, learned Standing counsel appearing for APPSC/Resp. Nos. 1,2,3,4 & 7. Also heard Mr. T. T. Tara, learned Addl. Advocate General, Arunachal Pradesh, assisted by Ms. P. Pangu, learned counsel appearing for the State respondent Nos. 5,6, 31 to 36 and Mr. Ajin Apang, learned senior counsel appearing on behalf of the respondent Nos. 13,17, 18 and 24. Mr. Gimi Tarak, learned counsel appearing for Respondent Nos.8, 10, 11, 12 and 15 and Mr. Dicky Panging, learned counsel appearing on behalf of the respondent Nos. 19, 21-23 and 26-30.

**2)** The petitioner, herein, applied for job in pursuance to the advertisement dated 25-01-2013, whereby, applications were invited for filling up 2 posts of Assistant Engineer (Civil) under the Department of Water Resources and Rural Works, Government of Arunachal Pradesh. Out of 2 posts, 1 was reserved for Arunachal Pradesh Scheduled Tribes candidate(APST) and other was an unreserved post.

**3)** Another notification dated 12-07-2013 was issued by the respondent No.4 informing all candidates that written examination for the post of Assistant Engineer (Civil) would be held on 10<sup>th</sup> and 11<sup>th</sup> August, 2013 and it was also

mentioned that the vacancy of the posts has been increased by 21. The said posts besides 2 posts of the advertisement of Assistant Engineer (Civil) in the Department of WR & RW also included other 11 posts of APPWD, 1 post of UD and Housing, 2 posts of PHED and 5 posts of DHPD.

**4)** The petitioner appeared in the written test and also appeared for viva-voce test on 28-05-2014. The allegation of the petitioner is that when he attended the interview Board, he was shocked and surprised to see that the respondent No.8, Smti Indira Mallo Tana (IAS) was as one of the Board Members to conduct the interview. According to him, 2 of the candidates i.e. respondent No.10 and respondent No.11, who appeared for the viva-voce interview on 28-05-2014 were very close kith and kin of the respondent No.8. On the same day of interview, select list of the selected candidates was published wherein 22 candidates were shown to have been selected against 21 vacancies in the various departments.

**5)** It is further alleged that the respondent authorities displayed utmost callousness and perfunctoriness in the paper checking system of the written examination conducted in the selection process. The answer scripts do not bear any awarded marks against each question, nor the signatures of the paper checkers or the date when the said answer scripts were checked. The marks were tabulated on loose sheets that too without any signature or seal of any official of the respondent No.1, which left ample scope for tampering manipulation thereof.

**6)** The respondents have raised preliminary objection with regard to maintainability of the writ petition by the petitioner. It is submitted by the learned counsel for the respondents that the petitioner is an unsuccessful candidate and as such, he cannot question the appointment of qualified candidates. Mr. D. Panging, learned counsel for the respondent No.19, 21-23 & 26 to 30, has submitted that although the petitioner has annexed the copy of the advertisement but he has not stated the important and vital contents of the advertisement "***vacancy position is subject to variation***". The petitioner came to

know about the increased/variation number of posts from 2 to 21 vide notification dated 12-07-2013, which was published in the local dailies. He did not agitate the notification but took chance by appearing in the written examination and viva-voce. He is agitating after he did not find his name in the final select list of the candidates dated 28-05-2014.

**7)** It is further submitted that the result was announced on 28-05-2014 after a long gap i.e. after lapse of five months. The petitioner and others filed a representation on 24-10-2014 and this writ petition was filed by the petitioner on 22-05-2015, nearly one year of the selection of the private respondents.

**8)** In the cited case of **Madan Lal and Others Vs. State of J & K and Others**, reported in **(1995) 3 SCC 486**, wherein, para 23, it was observed as under:-

*23. It is no doubt true that even if requisition is made by the Government for 11 Posts the public Service Commission may 'send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the eleven vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once 11 Vacancies are filled by candidates*

*taken in order of merit from the select list that list will get exhausted, having served its purpose.*

9) Another cited case of **Pradeep Kumar Rai and Others Vs. Dinesh Kumar Pandey and Others**, reported in **(2015) 11 SCC 493**, it was held in para 17, as under:-

*"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at the time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."*

10) In the case of **Madras Institute of Development Studies and Another Vs. K. Sivasubramaniyan and Others**, reported in **(2016) 1 SCC 454**, it was held in para 13 and 15, as under:-

*13. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.*

*"15. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure*

**to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-**

*"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:*

*'9.....It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.'*

**11)** The learned counsel for the petitioner, Mr. Goswami, on the other hand, has cited the case of Mukul Saikia and Others Vs. State of Assam and Others, reported in AIR 2009 SC 747, wherein, it was held that filling up of the vacancies over and above the number of vacancies advertised would be violative of Articles 14 and 16 of the Constitution of India. However, in the cited judgment, it was observed that the appellant have no locus standi to challenge the regulation of private respondents against the vacancies.

**12)** The unreported cited case of **Radhey Shyam Singh and others Vs. Union of India and Others**, decided on 09-12-21996 in **Civil Appeal No. 4190 of 1995**, was against the process of zone wise selection not providing equal opportunity to the candidates appearing in different zone. The facts and circumstances of the cited case is entirely different with the present case. By citing the case of **Jaswant Singh Nerwal Vs. State of Punjab and Others**, **decided on 14-02-1991 in Civil Appeal No. 334 of 1978**, published in

Manupatra/SC/0650/1991 and the judgment passed by this Court in WP(C) No.221 of 2006, the learned counsel for the petitioner has attempted to impress upon this Court that the matter needs elaborate hearing and it may be admitted for hearing.

**13)** Considering the settled law in the cases of **Madan Lal and Others** (supra), **Pradeep Kumar Rai and Others** (supra) and **Madras Institute of Development Studies** (supra), this Court finds that the challenge made by the petitioner to the recruitment process of the private respondents after a gap of one year of the recruitment, where he voluntarily appeared and took part in the process of selection, but being unsuccessful in the selection cannot be allowed being not maintainable.

**14)** Accordingly, this writ petition is dismissed and disposed of. There shall be no order as to costs.

**JUDGE**

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