

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

WP(C) 441(AP)2015

1. Shri Gamli Ngulom Lendo,
S/o of Bigam Ngulom Lendo,
Aged about 28 years,
Permanent resident of Mali village,
P.O. & P.S. – Likabali, West Siang District,
Arunachal Pradesh.
2. Shri Kongking Doruk,
S/o of Paying Doruk,
Permanent resident of Mirku Village,
P.O. & P.S.-Pasighat,
East Siang District, Arunachal Pradesh.
3. Shri Kalom Pertin,
C/o Talem Tasung,
Permanent resident of Boying Village,
P.O. & P.S.-Pasighat,
East Siang District, Arunachal Pradesh.

- **Petitioners**

-Versus-

1. The State of Arunachal Pradesh,
Represented by the Chief Secretary,
Govt. of Arunachal Pradesh, Itanagar.
2. The Principal Chief Conservator of Forests,
Government of Arunachal Pradesh, Itanagar.
3. The Chief Conservator of Forests,
Central Arunachal Circle,
Government of Arunachal Pradesh, Pasighat.
4. Shri Solondo Mengu,
S/o Tapir Mengu,
E-1, Village-Sibo (Bakek), Pasighat,
East Siang District,
Arunachal Pradesh (Roll-11).
5. Shri August Tamut,
S/o Tagam Tamut,
Village-Boying (Balek), Pasighat,
East Siang District,
Arunachal Pradesh (Roll-31).
6. Shri Ayem Gamno,
S/o Kyalem Gamno,
Village-Millang (Mariyang),
Upper Siang District,
Arunachal Pradesh (Roll-59).

- **Respondents**

**BEFORE
HON'BLE MR. JUSTICE A. K. GOSWAMI**

For the petitioner	: Mr. K. Jini, Advocate Mr. T.T. Tara, Advocate.
For respondent Nos.1 to 3	: Mr. D. Soki, Addl. Senior Government Advocate, Arunachal Pradesh.
Date of Judgment & Order	: 08.09.2016

**JUDGMENT & ORDER
(ORAL)**

Heard Mr. Kento Jini, learned counsel for the petitioners. Also heard Mr. Duge Soki, learned Addl. Senior Government Advocate, for Respondents No. 1 to 3.

2. This Court's order dated 18.08.2016 goes to show that private respondent No. 4 has not contested that case despite service of notice. The said order also goes to show that petitioner had filed additional affidavit regarding service of notice upon respondents No. 5 and 6 by way of dasti.

3. Respondents No. 5 and 6 are not represented and, as agreed to by the learned counsel appearing for the parties, this writ petition is taken up for disposal at the admission stage itself.

4. While issuing notice of motion on 05.10.2015, this Court had directed that no appointment to the post of Primary Investigator (P.I.) shall be made pursuant to the impugned selection process without leave of this Court.

5. This writ petition was filed at a stage where viva-voce was not held.

6. Mr. Soki, learned Addl. Senior Government Advocate, has submitted that no further development has taken place in the selection process in view of pendency of this writ proceeding.

7. The instant writ petition was filed by 3(three) candidates who had submitted their applications for appointment to the post of P.I. pursuant to the advertisement dated 21.01.2014, a copy of which has been annexed as Annexure-1 to the writ petition. There is a lone post of P.I. which is reserved for Arunachal Pradesh Scheduled Tribe (APST) candidate.

8. The petitioners were eligible to submit their candidatures and, accordingly, they were assigned Roll Nos. 63, 64 and 65. Written examination was held on 02.11.2014

and when the list of select candidates was published on 16.07.2015, Roll Nos. of the petitioners figured in the said list, making them eligible to qualify for the viva-voce/interview.

9. For the purpose of viva-voce, letters dated 20.07.2015, giving details, i.e., date, time and venue, were sent to the petitioners. The viva-voce was slated on 10.08.2015. However, on 03.08.2015, a Corrigendum was issued by the authority concerned indicating that the result of written examination in respect of P.I., which was published on 16.07.2015, had been kept in abeyance until the matter was technically sorted out and, accordingly, viva voce, which was fixed on 10.08.2015, was cancelled.

10. Thereafter, on 25.09.2015, a Notification (Annexure-7 to the writ petition) was issued stating that Roll Nos. 11, 31 and 59 were found to be qualified for viva-voce which was fixed on 07.10.2015. By the said Notification dated 25.09.2015, result of written examination in respect of P.I., which was published on 16.07.2015, was cancelled.

11. Aggrieved by replacement of the writ petitioners' names by subsequently selected candidates having Roll Nos. 11, 31 and 59, this writ petition is filed challenging the Notification dated 25.09.2015. It is seen that the said Notification is wrongly referred to as Notification dated "27.09.2015" in the prayer portion. Challenge is also made to the Corrigendum dated 03.08.2015, and writ of mandamus is also prayed to direct the State respondents to proceed with the selection process as per the select list published on 16.07.2015.

12. By order dated 05.09.2016, the State respondents were directed to produce the original answer scripts in respect of Roll Nos. 11, 31, 59, 63, 64 and 65, and, in due compliance of this Court's order, Mr. Soki has produced the original answer scripts today.

13. The Court has permitted Mr. Jini to examine the answer scripts as produced by the Mr. Soki and Mr. Jini has submitted that he has examined all the answer scripts.

14. Mr. Jini has submitted that on examination of the answer scripts, he has not found any discrepancy so far as totalling of marks is concerned, save and except in the case of 1 candidate, i.e. petitioner bearing Roll No. 65, where 2 marks were not added. He has submitted that after a delay of more than 2 months from declaration of the result of written examination and after issuance of letters to the petitioners for viva

voce, the impugned Corrigendum dated 03.08.2015 and the Notification dated 25.09.2015 were issued on extraneous and irrelevant considerations.

15. Learned counsel for the petitioners has also submitted that a perusal of the answer scripts would go to show that the signature of the invigilator is different in respect of the petitioners and that of private respondents No. 4 to 6 and therefore, there is a genuine apprehension that undue benefit is sought to be given to the private respondents No. 4 to 6. Mr. Jini has strenuously urged that the Roll Number of one of the respondents being Roll No. 59, it does not stand to reason that signature of the invigilator appearing on the answer script of the respondent No. 59 should not be same to the signature appearing on the answer script of the petitioners as the petitioners are in close proximity of Roll No. 59. He has submitted that the candidate who was ultimately shown to have scored the highest marks in the written examination had also indicated his Roll No. and name in 2 of the answer scripts, namely, General Knowledge and Mathematics and therefore, the sanctity of the selection process is vitiated. Accordingly, he submits that it is a fit case for allowing the writ petition by granting the reliefs as prayed for.

16. Learned counsel for the petitioners has also argued that the State respondents sought to put the blame upon one Sri S. Srivastava, PI, for the alleged wrong committed by him in preparation of the result sheet but there is nothing on record to suggest that he was in any way associated with the selection process and therefore, a cover-up operation is undertaken by the State respondents to grant undue benefit to the private respondents No. 4 to 6.

17. Mr. Soki, learned Addl. Senior Government Advocate, on the other hand, has submitted that the case projected by the petitioners has no legs to stand inasmuch there is no dispute with regard to the marks obtained by the petitioners and the private respondents. It is contended by Mr. Soki that it is not the case of the petitioners in the writ petition that the examination was held in only room and that apart, it is always possible to have more than one invigilator in a single room and, therefore, merely because signatures of two different invigilators have appeared in the answer scripts of the petitioners and private respondents No. 4 to 6, the same cannot lead to the inevitable conclusion that some illegalities and irregularities were committed by the State Respondents in the selection process. With regard to reflection of one of the private respondent's Roll No. and name in the answer scripts, learned Addl. Senior Government Advocate has submitted that the same had been scored off and covered

before the answer scripts were evaluated. It has been submitted by him that the petitioners were declared to have been selected, as reflected in Notification dated 16.07.2015, only on account of the fact that in the tabulation sheet, Roll Nos. 65, 64, and 63 were placed at the top of the list and it was mistakenly construed that they had secured the three top positions and, accordingly, the Notification, in question, came to be published. Later on, it was detected that the list submitted, wherein the names of the petitioners appeared in top three positions, was not prepared in the order of merit and, accordingly, the corrigendum dated 03.08.2016 was issued. Subsequently, the anomaly was rectified and it was found that private respondents No. 4 to 6 had secured the top three positions and, accordingly, by Notification dated 25.09.2015, their names were published to enable them to take part in the viva-voce test.

18. Mr. Soki, has submitted that the position of the petitioners is much lower in the merit list and, in any view of the matter, it cannot be said that the writ petitioners are prejudiced. Learned Addl. Senior Government Advocate has further submitted that although it appears that 2 marks were not added to the total marks in English paper in respect of one of the petitioners bearing Roll No. 65, the same would not make any material difference. Accordingly, he has submitted that the instant writ petition is liable to be dismissed.

19. I have considered the submissions of the learned counsel appearing for the parties and perused the materials placed on record.

20. It appears that written examination was held on 3(three) subjects, namely, English, General Knowledge and Mathematics. The documents produced by learned Addl. Senior Government Advocate goes to show that the petitioners bearing Roll Nos. 63, 64 and 65 scored 142.20, 117.50 and 136.50 marks, respectively. The respondents No. 4, 5 and 6, scored 206.25, 217.00 and 202.50 marks, respectively.

21. There is a gulf of difference between the marks scored by the petitioners and the private Respondents No. 4 to 6 and in the merit list prepared on the basis of marks, Roll Nos. 63, 64 and 65 are placed at serial Nos. 24, 38 and 28, respectively.

22. It is already noted that learned counsel for the petitioners has expressed no reservation with regard to marks given in respect of the private respondents No. 4 to 6 or the petitioners. The fact that the candidate having Roll No. 31 had initially written both his Roll number as well as his name will also not make any difference in the facts and circumstances of the case as they were covered up. A single such instance will not

invalidate the selection process, more so, when there is nothing to suggest that he or the other two selected candidates did not deserve the marks that were awarded to them. The entire edifice of the case of the petitioners is built on the basis that they had been illegally replaced from the select list to grant undue benefit to the respondents No. 4 to 6.

23. It was also sought to be contended by Mr. Jini that, subsequently, after the written examination had taken place, manipulations came about and that is why the State Respondents have taken such a long time to come up with the Notification dated 25.09.2015.

24. I am unable to agree with the aforesaid submission of Mr. Jini.

25. In the counter affidavit, State respondents have taken a clear stand that Roll Nos. 63, 64 and 65 were wrongly published without considering their actual marks.

26. Annexure-B of the counter affidavit is a report of a Committee constituted by the Chief Conservator of Forest, Central Arunachal Circle, Pasighat, in respect of publication of erroneous result in the written examination for the post of P.I.. The relevant portion of the Committee's report, reads as under:

"In determining whether there was a technical error in the result of the written examination in respect of the post of Primary Investigator(PI) that was published in the Newspaper on 16th July, 2015, the committee had gone through the records of statements of marks obtained by each of the candidates totalling 44(forty four) numbers who have appeared in the written examination held at Pasighat on 02/11/2014. In the course, sheet containing list of candidates with code numbers, marks statement was examined which was available in the file. This list was then verified with the marks score record as per score sheet and the actual marks allotted by the evaluators on the answer sheet of each of the coded answer sheet. The mark score sheet tallies with the answer sheet record as per the marks statement record maintained at the office file. To further authenticate the total marks score of each candidate on every subject, individual question wise allotted by the evaluator and the total marks recorded also verified for all the candidates of all subjects as per the statement enclosed vide annexure-III. Some minor variation in total score record were notice in the case of 7(seven) numbers of candidates bearing Roll Nos. 14, 26, 28, 37, 46, 63 and 65. These error was cause during the totalling of score at the hands of evaluator and not

during completion at the office. The committee had noted that there was actually an error in publishing the highest three scorers of marks of written examination. In the Newspaper of 16 July, 2015, Roll Nos. 63, 64 and 65 were published as qualified for viva voce test whose total marks score were 142.20, 117.50 and 136.5 respectively, but the actual three highest marks scorers in the written examination were Roll Nos. 11, 31 and 59 whose total marks score were 206.25, 217.0 and 202.5 respectively. The candidates with Roll numbers 11, 31 and 59 are top three ranked in the written examination held on 02/11/2014 even after necessary corrections on variation of marks allotted to the Roll Nos. 14, 26, 28, 37, 46, 63 and 65, as above."

27. With regard to the role played by S. Srivastava, P.I., the Committee had observed as follows:

"On the possibility of mala fide and ill intention of Shri S. Srivastava, P.I while preparing the result of written examination for the post of P.I. every possibility had been explored in examination records and during oral examination of staffs and the officers to watch out for any clue, but no such evidences noted by the enquiry committee. It was stated that Shri S. Srivastava himself had detected the error in result release during the process of issue of call letter and brought to the knowledge of CCF on 3^d August 2015 which was vetted by the CCF during enquiry. The error result as soon as detected was taken care of by the CCF and immediately withdrawn on 3^d August 2015 vide No. CAC/544/E/dated 03/08/2015 and published on 4th August 2015 in The Arunachal Times (Annexure-IV). Thereby suggesting it was a case of inadvertent mistake of facts.

On the possibility of any influence over Shri S. Srivastava while preparing result from within office or internal agent, all the 21 (Twenty one) officer and staff including contingent employee, residential neighbour of Shri S. Srivastava were called and examined by the committee, but no one had raised any doubt over the working of Srivastava, P.I. nor any other evidences could gathered from any other sources as to undue influence over S. Srivastava, P.I from within the departmental officers or any external agent(Annexure-V)"

28. From the observations in the report extracted above, it is clear that it was S. Srivastava, who himself had detected the error at the time of issuance of the call letters and had brought the same to the notice of the Chief Conservator of Forest and,

thereafter, the corrigendum dated 03.08.2016 was issued. On examination of the records and taking into account the facts and circumstances, the Committee had arrived at the following conclusions:

- "1. There was genuine technical error in the result of written examination for the post of PI that was published on Newspaper 16/07/2015.*
- 2. For determining the person responsible for error in result declaration for the written examination for the post PI, sensibly the officer who prepared the result should take up the burden but at the same time the officer who actually releases the matter in public domain had the equal responsibility to check the correctness of the matter which has far reaching consequences. In the instant case, the office had worked under pressure for early release of result and doing so, the file process was shortened to facilitate early release of result; relying entire matter at hand of Dealing Assistant without facilitating secondary level check before being placed to the CCF in proper file process.*
- 3. The Committee after thorough checking of marks statement prepared by the office with evaluator marks sheets arrived at the conclusion of that the technically correct result should have been of Roll No. 11 with total marks score 206.25, Roll No. 31 with total marks score 217 and Roll No. 59 with total marks score 202.5 who were in top three rank.*
- 4. The Committee after checking of all records at CCF Office in the relevant files and on oral examination of officers and staffs of the CCF office could not detect any evidences to suggest malafide and ill intention on the part of Shri S. Srivastava, PI, file presenting the abovementioned result for publication.*
- 5. The Committee could not find any evidences after conducting thorough examination of all possible witnesses to suggest any kind of influence of Shri S. Srivastava, PI, from any officers or staffs of the Department or any other external agents.*

As pointed out under para 5 above in the matter of minor variation in actual marks allotment and the total marks recorded for the 7(seven) of candidates with Roll Nos. 14, 26, 28, 37, 46, 63 and 65 needs to be suitably decided on rectification of variation by the evaluator/s.

In summing of the matter as adduced by the committee is of the view that there was an inadvertent mistake of fact on the committed on the part of Shri S. Srivastava, PI, without having mala fide and ill intention or undue

external pressure from the official himself had averted the fact to CCF and the matter was taken care from further damage."

29. On an overall consideration of materials on record, I have no hesitation to hold that because of *bona fide* error the petitioners were shown to have been selected for viva voce and materials on record do not indicate that there was any the tinkering with the selection process.

30. In the above view of the matter, I am of the considered opinion that no case is made out for interference under Article 226 of the Constitution of India and accordingly, the writ petition is dismissed.

31. Interim order passed earlier stands vacated.

32. No order as to costs.

JUDGE

Bikash/RK