

**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL**  
**PRADESH)**

**ITANAGAR PERMANENT BENCH**

**1. WP(C)562(AP)2015**

Shri Atom Jomoh,  
S/O Shri Gamja Jamoh, presently serving as  
Assistant Teacher (AT), Government  
Secondary School Pakoti, permanent R/O  
Vill.-Jomoh, P.O/P.S-Seppa, District East  
Kameng, Arunachal Pradesh.  
Ph. No. 9436051609.

*.....petitioner*

*-Vs-*

1. The State of Arunachal Pradesh, represented by the Commissioner/Secretary, Department of Education, Government of Arunachal Pradesh, Itanagar.
2. The Director, Elementary Education, Government of Arunachal Pradesh, Itanagar.
3. Shri Joram Jarjo, JT, presently serving at Govt. Higher Secondary School, Joram, District Lower Subansiri, Arunachal Pradesh.
4. Shri Kope Karga, JT, presently posted at Govt. Upper Primary School, Mebo Pasighat, District East Siang, Arunachal Pradesh.
5. Shri Pani Taba, JT, presently serving as i/c Vice Principal, Govt. Hr. Secondary School, Koloriang, Kurung Kurmey District, Arunachal Pradesh.
6. Shri Tadang Siram, JT, presently posted at Govt. Upper Primary School, Mebo, District East Siang, Arunachal Pradesh.
7. Mrs. Otel Ering, JT, presently posted at Govt. Middle School, Berung, Pasighat, District East Siang, Arunachal Pradesh.

*.....respondents*

## **2. WP(C)563(AP)2015**

Shri Kemo Taso, S/O Sri Marke Taso, presently serving as Assistant Teacher (AT), Govt. Upper Primary School, Village - Kombo Tarsu Mobuk, West Siang District, Arunachal Pradesh. Ph. No. 7085423856

*.....petitioner*

*-No-*

1. The State of Arunachal Pradesh, represented by the Commissioner/Secretary, Department of Education, Government of Arunachal Pradesh, Itanagar.
2. The Director, Elementary Education, Government of Arunachal Pradesh, Itanagar.
3. Shri Joram Jarjo, JT, presently serving at Govt. Higher Secondary School, Joram, District Lower Subansiri, Arunachal Pradesh.
4. Shri Kope Karga, JT, presently posted at Govt. Upper Primary School, Mebo Pasighat, District East Siang, Arunachal Pradesh.
5. Shri Pani Taba, JT, presently serving as i/c Vice Principal, Govt. Hr. Secondary School, Koloriang, Kurung Kurmey District, Arunachal Pradesh.
6. Shri Tadang Siram, JT, presently posted at Govt. Upper Primary School, Mebo, District East Siang, Arunachal Pradesh.
7. Mrs. Otel Ering, JT, presently posted at Govt. Middle School, Berung, Pasighat, District East Siang, Arunachal Pradesh.

*.....respondents*

## **3. WP(C)564(AP)2015**

Shri Tatup Taba, S/O Lt. Gello Taba, presently serving as Assistant Teacher (AT), Government Middle School Jollang, Itanagar, District Papumpare, Arunachal Pradesh.

*.....petitioner*

*-No-*

1. The State of Arunachal Pradesh, represented by the Commissioner/Secretary, Department of Education, Government of Arunachal Pradesh, Itanagar.
2. The Director, Elementary Education, Government of Arunachal Pradesh, Itanagar.
3. Shri Joram Jarjo, JT, presently serving at Govt. Higher Secondary School, Joram, District Lower Subansiri, Arunachal Pradesh.
4. Shri Kope Karga, JT, presently posted at Govt. Upper Primary School, Mebo Pasighat, District East Siang, Arunachal Pradesh.
5. Shri Pani Taba, JT, presently serving as i/c Vice Principal, Govt. Hr. Secondary School, Koloriang, Kurung Kurmey District, Arunachal Pradesh.
6. Shri Tadang Siram, JT, presently posted at Govt. Upper Primary School, Mebo, District East Siang, Arunachal Pradesh.
7. Mrs. Otel Ering, JT, presently posted at Govt. Middle School, Berung, Pasighat, District East Siang, Arunachal Pradesh.

.....*respondents*

#### **4. WP(C)565(AP)2015**

Shri Tumto Lomi, S/O Shri Kartum Lomi, presently serving as Assistant Teacher (AT), Govt. Upper Primary School, Village-Eyi, West Siang District, Arunachal Pradesh. Ph. No. 94366036916.

.....*petitioner*

*No-*

1. The State of Arunachal Pradesh, represented by the Commissioner/Secretary, Department of Education, Government of Arunachal Pradesh, Itanagar.
2. The Director, Elementary Education, Government of Arunachal Pradesh, Itanagar.

3. Shri Joram Jarjo, JT, presently serving at Govt. Higher Secondary School, Joram, District Lower Subansiri, Arunachal Pradesh.
4. Shri Kope Karga, JT, presently posted at Govt. Upper Primary School, Mebo Pasighat, District East Siang, Arunachal Pradesh.
5. Shri Pani Taba, JT, presently serving as i/c Vice Principal, Govt. Hr. Secondary School, Koloriang, Kurung Kurmey District, Arunachal Pradesh.
6. Shri Tadang Siram, JT, presently posted at Govt. Upper Primary School, Mebo, District East Siang, Arunachal Pradesh.
7. Mrs. Otel Ering, JT, presently posted at Govt. Middle School, Berung, Pasighat, District East Siang, Arunachal Pradesh.

*.....respondents*

**5. WP(C)566(AP)2015**

Shri Yarkup Tok, S/O Sri T. Tok, presently serving as Assistant Teacher (AT), Government Middle School Type-I, Seppa, District East Kameng, Arunachal Pradesh.  
Ph. No. 9402757507.

*.....petitioner*

*-No-*

1. The State of Arunachal Pradesh, represented by the Commissioner/Secretary, Department of Education, Government of Arunachal Pradesh, Itanagar.
2. The Director, Elementary Education, Government of Arunachal Pradesh, Itanagar.
3. Shri Joram Jarjo, JT, presently serving at Govt. Higher Secondary School, Joram, District Lower Subansiri, Arunachal Pradesh.
4. Shri Kope Karga, JT, presently posted at Govt. Upper Primary School, Mebo Pasighat, District East Siang, Arunachal Pradesh.

5. Shri Pani Taba, JT, presently serving as i/c Vice Principal, Govt. Hr. Secondary School, Koloriang, Kurung Kurmey District, Arunachal Pradesh.
6. Shri Tadang Siram, JT, presently posted at Govt. Upper Primary School, Mebo, District East Siang, Arunachal Pradesh.
7. Mrs. Otel Ering, JT, presently posted at Govt. Middle School, Berung, Pasighat, District East Siang, Arunachal Pradesh.

.....respondents

#### **6. WP(C)567(AP)2015**

Shri Ramakirpa Rieng, S/O Lt. Longbo Sono, presently serving as Assistant Teacher (AT), Government Primary School Forest Colony Ty-III, Seppa, District East Kameng, Arunachal Pradesh. Ph. No. 9402877342.

.....petitioner

*-Vs-*

1. The State of Arunachal Pradesh, represented by the Commissioner/Secretary, Department of Education, Government of Arunachal Pradesh, Itanagar.
2. The Director, Elementary Education, Government of Arunachal Pradesh, Itanagar.
3. Shri Joram Jarjo, JT, presently serving at Govt. Higher Secondary School, Joram, District Lower Subansiri, Arunachal Pradesh.
4. Shri Kope Karga, JT, presently posted at Govt. Upper Primary School, Mebo Pasighat, District East Siang, Arunachal Pradesh.
5. Shri Pani Taba, JT, presently serving as i/c Vice Principal, Govt. Hr. Secondary School, Koloriang, Kurung Kurmey District, Arunachal Pradesh.
6. Shri Tadang Siram, JT, presently posted at Govt. Upper Primary School, Mebo, District East Siang, Arunachal Pradesh.

7. Mrs. Otel  
Ering, JT, presently posted at Govt. Middle  
School, Berung, Pasighat, District East  
Siang, Arunachal Pradesh.

.....respondents

**7. WP(C)568(AP)2015**

Shri Taw Tado, S/O Sri Taw Pahi, presently  
serving as Assistant Teacher (AT), Government  
Middle School Silsango, Circle Silsango, District  
Papumpare, Arunachal Pradesh. Ph. No.  
9436230893.

.....petitioner

-No-

1. The State of Arunachal Pradesh, represented  
by the Commissioner/Secretary, Department  
of Education, Government of Arunachal  
Pradesh, Itanagar.
2. The Director, Elementary Education,  
Government of Arunachal Pradesh,  
Itanagar.
3. Shri Joram Jarjo, JT, presently serving at  
Govt. Higher Secondary School, Joram,  
District Lower Subansiri, Arunachal Pradesh.
4. Shri Kope Karga, JT, presently posted at  
Govt. Upper Primary School, Mebo  
Pasighat, District East Siang, Arunachal  
Pradesh.
5. Shri Pani Taba, JT, presently serving as i/c  
Vice Principal, Govt. Hr. Secondary School,  
Koloriang, Kurung Kurmey District,  
Arunachal Pradesh.
6. Shri Tadang Siram, JT, presently posted at  
Govt. Upper Primary School, Mebo, District  
East Siang, Arunachal Pradesh.
7. Mrs. Otel Ering, JT, presently posted at  
Govt. Middle School, Berung, Pasighat,  
District East Siang, Arunachal Pradesh.

.....respondents

**By Advocates:**

For the petitioners: Mr. Rintu Saikia  
Mr. Kemo Lollen  
Mr. L. Nochi

Ms. C. D. Thonchi  
Mr. R. Bori  
Mr. I. Bagra  
Mr. T. Zirdo

For the respondents: Mr. T. Jamoh, Standing  
Counsel(Education Department)  
Mr. J. Hussain, Respondents No.  
4 to 7.

**:::BEFORE:::**

**HON'BLE MR. JUSTICE AJIT BORTHAKUR**

**Date of hearing : 05.03.2018**

**Date of Judgment : 02.05.2018**

**JUDGMENT & ORDER(CAV)**

Heard Mr. Rintu Saikia, learned counsel for the petitioners, in all these 7(seven) writ petitions. Also heard Mr. Tagum Jamoh, learned Standing counsel, Education Department, appearing on behalf of respondents No. 1 to 3; and Mr. Jakir Hussain, learned counsel appearing on behalf of private respondents No. 4 to 7.

**2.** Since all these 7(seven) writ petitions pertain to same issue, therefore, they are being disposed of together, by this common judgment & order.

**3.** The petitioners, herein, are serving as Assistant Teachers(for short 'AT') under the Department of Education in various Government Schools of Arunachal Pradesh. They have been appointed by the State Government, as such, on various dates in the years 1999, 2001, 2003 and 2004.

**4.** The basic grievance of the petitioners is that they have not been promoted to the higher post of Junior Teacher(for short 'JT'), as yet, despite they having the requisite B.Ed. Degree.

**5.** In the year 2011, some similarly situated eligible ATs filed WP(c)36(AP)2011, seeking for a direction to constitute the DPC, for consideration of their cases for promotion to JT. The said writ petition was

disposed of by the Court, vide judgment & order, dated 12.12.2012, directing the respondent authorities to constitute the DPC within 3(three) months from the date of the order. Accordingly, the DPC sat on 03.10.2013 and promoted 83 ATs to the post of JT against 58 vacancies including all the petitioners of the above-mentioned case. Out of those 83 promoted candidates, 24 ATs were not considered for promotion since they possessed B.Ed. Degrees from non-recognized Universities of CMJ, Shillong and BSP, Lucknow. As such, 59 ATs were given promotion as JTs.

**6.** By the said DPC, though all the 7(seven) petitioners, hereinbefore, have been selected for promotion to the post of JT, but were kept in the waiting list. It is stated that no DPC took place, thereafter. When the matter rested thus, the respondent authorities, more particularly, respondent No. 2 i.e. the Director, Elementary Education, Government of Arunachal Pradesh, Itanagar, illegally promoted the private respondents No. 3, 4, 5, 6 & 7, vide orders, dated 03.03.2014. According to the petitioners, the Department had published the seniority list, dated 20.06.2005, of the ATs, wherein the names of the petitioners are placed in the list at various positions, but higher than the private respondents, who were placed at serial Nos. 113, 125, 166, 252 and 305.

**7.** The petitioners contend that the private respondents No. 3, 4, 5, 6, & 7, were never considered in the DPC, dated 03.10.2013, since they were juniors to the instant petitioners and they had obtained the B.Ed. Degrees much later than the petitioners.

**8.** According to Mr. Saikia, learned counsel for the petitioners, 38 clear vacant posts of JT are presently lying in the Department, out of which, 19(50%) posts are to be filled-up by promotion from the senior most ATs. Since the petitioners fall within the zone of consideration for promotion to the post of JT as per the seniority list, dated 20.06.2005, they were waiting for their promotion, as such, but, no DPC has been convened till date.

**9.** Mr. Saikia, learned counsel, further submitted that the respondent authorities, in a most mechanical manner, promoted 59 ATs to the post of JT without considering the cases of the instant petitioners. As stated above, the respondent authorities again illegally promoted the private respondents No. 3, 4, 5, 6 & 7 as JTs by ignoring the seniority list, dated 20.06.2005 and DPC order, dated 03.10.2013, wherein they were not included for promotion as JTs since they did not fall within the zone of consideration.

**10.** Mr. Saikia, also submitted that the Department concerned, most arbitrarily, without calling for claims/objections and preparing a provisional seniority list, prepared and uploaded the final seniority list titled "List of (APST) Assistant Teachers(A) for promotion to JT – 2015-16" in the official website. Therein too, the respondents No. 3, 4, 5, 6 & 7, were placed at Sl. Nos. 188, 209, 282, 389, and 616, much below the petitioners. Therefore, they should not have been promoted by the respondent No. 2, vide impugned orders, dated 03.10.2014. Mr. Saikia, therefore, submitted that the list, referred to above, is *non-est* in the eye of law and the same may be quashed and set aside.

**11.** Mr. Saikia, learned counsel for the petitioners, finally submitted that this Court may quash the impugned orders, dated 03.03.2014, promoting the private respondents No. 3, 4, 5, 6 & 7, to the post of JTs, as they were illegally promoted by ignoring the seniority position of the petitioners and such an act on the part of respondent No. 2 is arbitrary, violative of principles of natural justice, service jurisprudence, equity, and administrative fair play.

**12.** Mr. Hussain, learned counsel, by filing the affidavit-in-opposition on behalf of private respondents No. 4, 6 & 7, on the other hand, have alleged that the petitioners were appointed on contractual service, and were subsequently regularized as AT, without any interview, in utter violation of the Recruitment Rules(RR).

**13.** Mr. Hussain, learned counsel, further alleged that the writ petitioners obtained B.Ed. Degrees later than the private respondents. Accordingly, the Department has considered the case of the private respondents No. 3, 4, 5, 6

& 7, for promotion to the post of JT prior to the petitioners since they fulfilled all the requisite qualifications for such promotion.

**14.** It has been contended by Mr. Hussain, learned counsel, that the instant writ petition is not maintainable since the petitioners did not implead some of the persons (altogether 10 in nos., according to the private respondents) who do not possess B.Ed. Degrees, but were promoted as JTs, as private respondents. Rather, the promotion of private respondents, herein, have been made by the respondent authorities by following the due process of law and without any violation of the seniority position.

**15.** Mr. Hussain, learned counsel, contended that the Department could not consider the cases of the petitioners for some lacunae in their ACRs. In fact, the private respondents have been promoted to the post of JTs because of better ACRs to that of the petitioners. The private respondents No. 4, 6 & 7, therefore, contend that the instant writ petition may be dismissed at the threshold.

**16.** Though private respondent No. 5 has filed a separate affidavit-in-opposition, however, the sum and substance of the pleadings advanced by the respondent in the said affidavit, is more or less identical to the stand taken by the private respondents No. 4, 6 & 7, in their affidavit-in-opposition, as mentioned above.

**17.** I have taken into consideration the rival submissions advanced by the learned counsels appearing for the parties as well as taken into consideration the materials placed on record.

**18.** The common grievance of the above writ petitioners, who are working as ATs in various Secondary/Primary Schools in the Department of Elementary Education, Government of Arunachal Pradesh, is that despite fulfilling the eligibility criteria as per the Junior Teacher Recruitment Rules, 2008(hereinafter referred to as 'RR, 2008'), their promotion to the next higher post of JT has not been considered, although similarly situated other ATs, who were even junior to them, were recommended for promotion, superseding

them by the DPC. It needs to be mentioned that the aforesaid RR, 2008, regulates the method of recruitment to the post of JT in suppression of the Recruitment Rules, 1973, to Class-III(Non-Gazetted) Teachers post. Column No. 11 of the RR, 2008, prescribes the method of recruitment by direct recruitment or by deputation/transfer and percentage of the vacancies of JT to be filled by various methods, as extracted, herein below:

***"(i). 50% by promotion, (ii).50% by direct recruitment adjudged through a merit as per the scheme notified vide No. OM-21/85, dated 28.08.2006 and 07.01.2008, (iii).80% of the post are reserved for APST candidates out of which 3% are reserved for physically handicapped person as per Govt. Notifications vide SW-13/2007 (PIL), dated 21.05.2007 and 5% of the post are reserved for meritorious Sports person as per Govt. Notification No. OM-13/2000, dated 14.05.2001."***

**19.** Column 12 provides eligibility criteria for recruitment by promotion, as under:

***"By promotion from among the Assistant Teachers of the Department, who have completed 5 (five) years of regular service in the grade and possessing qualification prescribed in column-8."***

**20.** The above criteria were amended vide Notification No ED2/136/2011, dated 02.06.2014, under the short title 'Trained Graduate Teacher(TGT) Recruitment Rules, 2008'(for short 'TGT Rules, 2008') and in column 11 thereof, in respect of the method of recruitment as herein below extracted:

***"(a). 30% by promotion, 70% by direct recruitment through a merit adjudged through competitive examination as per the examination scheme notified by the Government. Reservation scheme notified by the Government. Reservation of the posts and relaxation of age etc. shall be governed by such notifications issued by the Government of Arunachal Pradesh from time to time."***

**21.** Pursuant to the reliefs granted by this Court in W.P(C)No. 36(AP)2011, the cases of 10 (ten) similarly situated ATs, who were deprived of their due promotion and who filed the said writ petition, were considered along with the petitioners in W.P.(c)No. 360(AP)2011 and W.P.(C)No.437(AP)2012, by the DPC meeting held on 03.10.2013. The DPC, after scrutiny of the seniority list and in terms of the criteria of RR, 2008, recommended 58 ATs, (47 under APST category and 11 under General Category) for promotion to JT, inclusive of ATs having qualifications of DPE/ D.El.Ed for JTs at Elementary Level, subject to completion of B.Ed to be eligible for higher post as JT (Sec)/ST/HM etc. The petitioners have contended that altogether 106 ATs were

promoted/selected to the next higher promotional post of JTs, 83 ATs were selected, but rest 23 selected ATs were kept in the waiting list, and thereby the private respondents were promoted superseding the petitioners. However, finally 59 ATs were promoted as JTs against 58 clear vacancies, out of which 10 candidates did not even possess the requisite B.Ed degree, depriving and keeping the petitioners, who fulfilled all the requisite eligibility criteria as per RR, 2008, in the waiting list. Out of the 19 ATs mentioned in the waiting list for promotion to JTs, 15 Nos were under APST category and 4 Nos. under General category and further, the records reveal that there are 38 existing vacancies of JTs, out of which 19 (50%) posts are to be filled up by direct recruitment and rest 19% (50%) posts are to be filled up by promotion from amongst the senior-most ATs in terms of the seniority list, dated 20.06.2005 by way of convening DPC, which has not been done till date. Mr. Saikia, learned counsel for the petitioners submitted that the Supreme Court, in the case of *Union of India v. N. R. Banerjee*, reported in (1997) 9 SCC 287, mandated that **"DPC should be convened every year, if necessary, on a fixed date i.e. 1<sup>st</sup> of April or May."**

**22.** Be it mentioned here that the petitioners are eligible to be considered for promotion to the next higher post of JT, which fell vacant in the year 2007 to 2013 and prior to amended RR 2014, came into force and as per the seniority list, dated 20.06.2005 instead of the seniority list of 2015-16 of the ATs.

**23.** The inevitable corollary of the above is that the respondent authorities, while undertaking the exercise of process of promotion of ATs, had taken into account, which may have been thought to be bonafide and with the best of intentions, as relevant factors, which they actually ought not to have taken into account in deciding the same, bereft of RR, 2008.

**24.** Here, it is pertinent to refer to the observations made by the Supreme Court in the case of *N. R. Banerjee*(*supra*), which reads, thus:

**"12. It is true that filling up the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right on him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and**

*omission thereof should not be arbitrary. In Shankarsan Dash v. Union of India[(1991) 3 SCC 47] the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even through the State acts in an arbitrary manner. In Babita Prasad v. State of Bihar[(1993) Suppl(3) SCC 268], it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making a panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In Union Territory of Chandigarh v. Dilbagh Singh[(1993) 1 SCC 154], it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In State of Bihar v. Secretariat Asstt. Successful Examinees Union, 1986[(1994) 1 SCC 126], it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and they by itself does not amount to selection or creation of a vested right to appointment unless relevant rules State to the contrary."*

**25.** It is, however, noticed that no DPC sitting has been held to consider the grievances of the writ petitioners and similarly situated ATs, since last held on 03.10.2013.

**26.** Be that as it may, in the backdrop of the contentions made by the petitioners, this Court finds it appropriate to direct the respondent authorities to constitute the DPC, within a period of 3(three) months from the date of receipt of a certified copy of this order which shall be furnished by the petitioners, within a period of 7(seven) days from today. It is hereby directed accordingly.

**27.** Needless to say that the respondent authorities shall place the petitioners' case along with other similarly situated eligible candidates before the DPC for consideration and take appropriate decision regarding their promotion, in accordance with law.

**28.** With the above directions, the writ petitions stand **disposed of**.

**JUDGE**

*Bibash*