

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

1. WP (C) 222 (AP) 2018

1. Shri Tajing Yaying,

Son of Shri Tabang Yaying,
Village - Gaming;;
P.O. - Payum; P.S. - Kaying
District Siang,
Arunachal Pradesh.
Present address-C/o- Hanggung Taring
64-C Sector, Itanagar, Arunachal Pradesh.

2. Shri Techi Tuglo,

Son of Techi Taying,
Village- Rissi; P.O.- Palin; P.S.- Sangram;
District Kurung Kumey, Arunachal Pradesh,
Present address- C/o- Techi Taniang,
Geological & Mining Office, Itanagar,
Arunachal Pradesh.

.....petitioners.

-VERSUS-

- 1. The Arunachal Pradesh Public Service Commission,** Vidhan Vihar, Itanagar represented through Secretary, Govt. of Arunachal Pradesh, Itanagar.
- 2. The Chairman,** Arunachal Pradesh Public Service commission, Itanagar.
- 3. The Controller (Examination)/ Deputy Secretary,** Arunachal Pradesh Public Service Commission, Govt. of Arunachal Pradesh, Itanagar.

.....respondents.

2. WP (C) 224 (AP) 2018

1. Miss Jomgam Ete,

D/o Shri Kenjom Ete,
Village - Bene;
P.O./P.S. - Aalo
Circle Aalo
District Siang, Arunachal Pradesh.

2. Shri Riidang Minggam Tapak,

Son of Shri Tangor Tapak,
Village- Rani (Permanent residence)
P.O./P.S.- Pasighat;
District East Siang, Arunachal Pradesh,

...Petitioners

-VERSUS-

- 1. The Arunachal Pradesh Public Service Commission,** Vidhan Vihar, Itanagar represented through Secretary, Govt. of Arunachal Pradesh, Itanagar.
- 2. The Chairman,** Arunachal Pradesh Public Service commission, Itanagar.
- 3. The Controller (Examination)/ Deputy Secretary,** Arunachal Pradesh Public Service Commission, Govt. of Arunachal Pradesh, Itanagar.

...Respondents

**::BEFORE::
HON'BLE MR JUSTICE SANJAY KUMAR MEDHI**

:: By Advocates:

For the Petitioners: Shri T. Tapak.

For the respondent/ Defendant: Shri A. Apang.

Date of hearing : **29.05.2019**

Date of Judgment & Order (Oral) : **29.05.2019**

JUDGMENT & ORDER (ORAL)

Though, these 2 (two) writ petitions are at the stage of admission, as agreed to by the parties and also keeping in view the nature of dispute, the same are taken up for disposal at this stage itself.

2. The issue in both the writ petitions being similar, the same are proposed to be disposed of by this common judgment and order.

3. Before going into the issue for determination, it would be beneficial to extract the facts of the case in brief. In so far as WP (C) 224 (AP) 2018 is concerned there are 2 (two) petitioners. The grievance relates to the rejection of their candidature for a recruitment test for the post of Assistant Engineer in various Departments of the State. The facts projected in the first writ petition is that pursuant to an Advertisement dated 04.07.2017, the petitioners had submitted their candidature. In Serial No. 3 pertaining to Education Qualification, it has been laid down that though a candidate should possess a Bachelor Degree in the concerned subject from a recognized University, final year students of such stream who are appearing in the final examination would also be eligible to appear. However, such candidates are required to submit self attested bona fide certificate testifying that they are in the final year Course/ last semester mark sheet issued by the University. As per the Advertisement, the last date of receipt of the application was stipulated as 09.08.2017. It is the case of the petitioners that so far as the petitioner No. 1 is concerned, the provisional certificate of his degree was issued on 20.09.2017 whereas so far as the petitioner No. 2 is concerned, the Course Completion Certificate is dated 18.07.2017. It appears that both the aforesaid certificates were issued after the publication of the Advertisement. In any case, it is the pleaded case of the petitioners that documents regarding their eligibility were submitted along with their application. However, the stand of the APPSC is that on scrutiny, such documents were found without self attestation and accordingly, the candidature of both the petitioners were rejected and the same is the subject matter of the first writ petition being WP (C) 224 (AP) 2018.

4. Coming to the facts of the 2nd writ petition being WP (C) 222 (AP) 2018, there are 2 (two) petitioners who had similarly submitted their candidature. In accordance with the requirement of the Advertisement to enclose a Caste Certificate, it is the case of the petitioners that necessary Caste Certificate (ST) was duly submitted along with the applications. However, on scrutiny, the said Certificates were allegedly not found and for this reason, the APPSC had

rejected their applications. It appears that when these writ petitions were moved, an interim direction was granted by this Court to allow the petitioners to appear in the written examination pursuant to which, the petitioners availed that opportunity. On declaration of the result of the written examination, it was found that the petitioner No. 2, namely, **Shri Riidang Mingam Tapak** in WP (C) 224 (AP) 2018 and the petitioner No. 1, namely, **Shri Tajing Yaying** in WP (C) 222 (AP) 2018 were amongst the successful candidates in the written examination. Since only one petitioner in each of the writ petition had succeeded in the written examination, this adjudication would be confining only to those 2 (two) candidates as the other 2 (two) petitioner could not qualify in the written test. For the sake of convenience, the said petitioner No. 2 and petitioner No. 1 in the respective cases would be termed as petitioners, henceforth.

5. I have heard Shri T. Tapak, the learned counsel for the petitioners in both the cases. I have also heard Shri A. Apang, the learned Sr. counsel as well as the Standing counsel APPSC assisted by Shri K. Riba, the learned counsel appearing on behalf of all the respondents-APPSC.

6. Shri Tapak, the learned counsel for the petitioners submits that so far as WP (C) 224 (AP) 2018 is concerned, it is the pleaded case that the Course Completion Certificate dated 18.07.2017 was issued after the Advertisement was published and in any case, the documents to show his eligibility was duly enclosed to his application. The categorical submission is that when it was made open that even the final year student of the same stream was allowed to sit in the written examination provided that necessary documents has to be submitted and the mandatory requirement of possessing a degree would be enforced only at the time of recruitment. In any case, the Course Completion Certificate dated 18.07.2017 having been issued and no dispute was even raised to its authenticity, it would be absolutely unjustified for rejecting the candidature of the petitioner on the alleged ground of non submission of self attested degree certificate.

7. The rejection being on the ground of lack of self attestation on the said certificate cannot be justified inasmuch as, the defects cannot be termed to be a fatal one and rather the same is a curable defect. Shri Tapak, the learned counsel for the petitioners by drawing the attention of this Court to the pleadings submit that the certificate enclosed was self attested which was misplaced by the APPSC and the counter affidavit filed by the APPSC does not specifically deny those averments. It is the further submission that though self attestation cannot be treated as mandatory requirement, the rejection should have been proceeded by verification by a screening committee which was also not done. Placing reliance upon judgment dated 27.05.2014 of the Division Bench of this Hon'ble Court passed in WA 13 (AP) 2014 (**APPSC-vs-Tomsang Pertin & Ors**), it is submitted that the Division Bench has discussed regarding "what is fundamental defect" and "what is curable defect". Going by the ratio of the said Judgment, it is submitted that there is no ambiguity that defect of such kind are merely curable defect and the authenticity of the certificate not having been disputed, the APPSC would not be justified to reject the candidature on the said ground. The learned counsel has also relied upon a case of the Division Bench of the Delhi High Court vide judgment dated 06.04.2010; (**Hari Singh-vs-Staff Selection Commission & Another**), wherein, it has been laid down that non furnishing of ST certificate with the enclosures is a curable defect if the same is submitted at a later stage.

8. Reference has also been made to a judgment of the Hon'ble Apex Court dated 24.12.1999 (**Tejpal Singh-vs-Govt. of the National Capital Territory of Delhi**), wherein, similar view has been taken regarding submission of SC/ ST certificate. The Hon'ble Apex Court has laid down that eligibility of a candidate cannot be denied on account of late submission of such certificate.

9. So far as the WP (C) 222 (AP) 2018 is concerned, the learned counsel has drawn the attention of this Court to the list of enclosure attached to the application filed in response to the Advertisement wherein, the ST certificate has been specifically mentioned. The pleadings, more specifically, in Paragraph Nos.

4 & 12 of the writ petition have been relied upon wherein it has been specifically contended that such certificate was given along with the applications. The learned counsel submits that as laid down by the Division Bench of the Delhi High Court as well as the Hon'ble Apex Court, late submission of ST certificate cannot be held to be fatal and in this regard, there is no dispute to the fact that the petitioners belongs to the ST category. Shri Tapak, the learned counsel also makes an alternative submission that even assuming that such certificate was not furnished along with the applications, the candidature could not have been rejected and at best the candidates could have been treated in the category of "un-reserved". However, that has also not been done which reflects the mechanical approach in the consideration of the applications.

10. It is submitted that since the petitioners have come out as a successful candidate in the written examination in terms of the interim order of this Court, there is a little scope for further adjudication, at this stage as those interim orders were not put to challenge by the APPSC and in fact, the grievances of the petitioners stood redressed. The only apprehension expressed is that the petitioners may not be allowed to participate in the Viva-voce which is in the pipeline.

11. Per contra Shri Apang, the learned Sr. counsel in his usual fairness has submitted that the action of the APPSC cannot be faulted as all actions have been carried out in accordance with the guidelines of the Commission. By relying upon the judgment of the Division Bench of this Court passed in the case of **Tomsang Pertin (Supra)**, it is submitted that the Division Bench itself having observed that the guidelines are to be followed by the Commission, no fault can be attributed to the Commission for taking any action in accordance with the guidelines. In so far as the first writ petition is concerned, when the Advertisement itself has specified requirement of self attestation, furnishing of certificates without self attestation implies negligence of the candidates and also raises a question about the authenticity of such documents.

12. Meeting the specific allegations made in the 2nd writ petitions, Shri Apang, the learned Sr. counsel submits that the question of misplacing the ST certificate would not arise as all the applications are given in a bunch which are duly scrutinized. Shri Apang, the learned Sr. counsel has submitted that the case laws are all distinguishable on facts and may not be applicable *per se* in the instant case. The learned Sr. counsel further submits that the facts in the case of Tomsang Pertin (*Supra*) would reveal that the examination in question in that case was an OMR system and the defects were absolutely trivial and hence curable in nature. However, in the instant 2 (two) cases, the defects/ shortcomings are of serious nature which would go to the roof of the matter and cannot be over-looked. The further submission is that the facts of the case before the Division Bench of the Delhi High Court are also distinguishable, wherein, the dispute was regarding an OBC certificate. The facts would reveal that indeed an OBC certificate issued by another State was given with the application but there was a requirement of a OBC certificate issued by the authorities in Delhi which was later obtained and submitted. It is in this context that the judgment was rendered by the Hon'ble Delhi High Court. Reliance has also been made to a reported case of **Tashichotfon-vs-State of Arunachal Pradesh and Another** reported in **2002 (1) GLT 495**, wherein, rejection of candidature for non furnishing of the age certificate was up-held by the Court. Referring to another judgment dated 12.09.2014 of this Court passed in WP (C) 262 (AP) 2014 (**Shri Dene Mena-vs-APPSC and Anr**), it is submitted that in the said case, rejection for non furnishing ST certificate was up-held by this Court. In fact in the aforesaid case, reference to the case of **Tashichotfon (Supra)** was also made.

13. Referring to the list of rejected candidates numbering 282, the Sr. counsel submits that the list was submitted giving opportunity to the affect parties to approach the Commission for rectification, if any, which the petitioner admittedly failed to do and in absence of availing the recourse for redressing their grievance, this writ petition could not have been filed. He has also referred to a representation filed on behalf of certain rejected candidates to demonstrate that such recourse was indeed available. The learned Sr. counsel

finally submits that no fundamental rights, whatsoever, of the petitioners have been violated and therefore, the present writ petitions are not fit cases for interference by this Court in exercise of power vested under Article 226 of the Constitution of India.

14. The rival contentions of the respective parties are considered and the material before this Court have been carefully examined.

15. As reflected above, the 2 (two) petitioners regarding whom the adjudication is confined and who have come out successful in the written examination in compliance of the interim orders passed by this Court. I find sufficient force in the argument made on behalf of the petitioners that the said interim orders not being challenged, there is hardly any further scope remaining for adjudication. However, since another stage of the recruitment process, namely Viva-voce is still there, it is in the opinion of this Court that a final adjudication may also be necessary on the merits of the case.

16. The ground of rejection in the first case is lack of self attestation in the certificate regarding Education Qualification. Apart from the fact of categorical assertion that such certificate with self attestation was submitted, what is noticed by this Court is that even in the Advertisement the requirement for submission of such certificate was relaxed to the extent of allowing final year students to participate in the recruitment test. When the certificate in the instant case dated 18.07.2017 is not a subject matter of challenge or its authenticity being doubted, rejecting the petitioners on that ground, in the opinion of this Court, would not be justified. As held by the Division Bench in the Judgment dated 27.05.2014, even assuming that the certificate did not have a self attestation, that might be treated to be a curable defect.

17. Though the Senior counsel appearing for the Commission may be right in contending that the guidelines are required to be followed by the APPSC in its

later and spirit, the technicalities cannot be allowed to over-ride the substantial justice in a given case.

18. As discussed above, the defect in the first case cannot be treated to be a fatal defect, more so, when the authenticity of the certificate is not put to question. As regards the 2nd case, the categorical averments made in the petition in Paragraph Nos. 4 & 12 read with list of enclosures leads this Court to a conclusion that such ST certificate was indeed submitted with the applications. Moreover, the said submission is not categorically denied in the counter affidavit of the APPSC. This Court finds force in the submission of the petitioners that even assuming such certificate was not enclosed with the application, the candidature as such, could not have been rejected and rather the petitioner should have been treated as an un-reserved candidate which has also not been done. The case of **Tashichotton (Supra)** cited by the learned Sr. counsel is clearly distinguishable as in Paragraph-3 of the said judgment, it has been observed that there was a clear admission by the petitioner of not furnishing the age certificate which was the ground for rejection of the application. The facts of **Dene Mena (Supra)** are also distinguishable inasmuch as, the fact of non submission of the ST certificate was fortified by the admitted fact that the PRC which was not a requirement for ST candidates was also submitted by the incumbent in that case as reflected in Paragraph-29 of the Judgment.

19. This Court has also considered the submission made on behalf of the APPSC that allowing this petition would amount to causing injustice to the rest of the rejected candidates. In the opinion of this Court, only parties who have come for enforcement of their rights would get the fruits of a litigation and the facts and circumstances in each of the cases would vary and this cannot be treated as judgment in rem and this is a judgment in persona. Though a further submission was made that no fundamental rights of the petitioners were being violated, this Court is of the opinion that right of fair consideration of the candidature of the petitioners, if not a fundamental right, is at least a legal right which the petitioners can come for its enforcement before this Court. The

submission regarding availability of alternative remedy appears to be self contradictory inasmuch as the APPSC has failed to do show any kind of consideration of the representation filed on behalf of certain rejected candidates. Rather, the statements appearing in the counter affidavit in reply to the averments made in connection with the said representation would show that there was no consideration at all.

20. In view of the aforesaid facts and circumstances and the discussions made above, the case of the petitioners who had cleared the written examination in those 2 (two) writ petitions are allowed and their rejection is interfered with. Consequently, these 2 (two) petitioners would be treated at par with other candidates who have passed the written examination and are eligible for participating for the Viva-voce whenever the same is scheduled. It is further made clear that the judgment had been passed on the facts and circumstances of these cases and would not act as a precedent for the other rejected candidates. This Court was also conscious of the fact that by virtue of the interim order, only 2 (two) candidates, namely, **Shri Riidang Mingam Tapak** in WP (C) 224 (AP) 2018 and **Shri Tajing Yaying** in WP (C) 222 (AP) 2018 have come out successfully in the written examination and this adjudication is therefore confined to the aforesaid 2 (two) candidates only.

In terms of the above, both the writ petitions stands disposed of.

JUDGE

Talorn