

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

ITANAGAR PERMANENT BENCH

WP(C) NO. 463(AP)2013

Mr. Atam Bagang
Resident of Village -I, Nirjuli,
P.S./P.O. - Nirjuli,
District - Papum Pare
Arunachal Pradesh.

.....*Petitioner*

- Versus -

1. The State of Arunachal Pradesh, represented by the Secretary, Agriculture, Government of Arunachal Pradesh, Itanagar.
2. The Director, Department of Agriculture, Government of Arunachal Pradesh, Naharlagun.
3. The Selection Board, represented by its Chairman, C/o Director, Department of Agriculture, Government of Arunachal Pradesh, Naharlagun.
4. Miss Yape Nibe, C/o District Agriculture Officer, Daporijo, District Upper Subansiri, P.O. Daporijo, Arunachal Pradesh.
5. Sri Likha Phon, C/o District Agriculture Officer, Ziro, District - Lower Subansiri, P.O. Ziro, Arunachal Pradesh.

.....*Respondents*

Advocates for the petitioner :- Mr. T. T. Tara
Mr. Kento Jini
Mr. Tamar Gadi
Mr. B. Picha
Mr. D. Kamduk
Mr. G. Bam
Mr. J. Jini
Mr. D. Loyi

Advocates for the respondents :- Ms. Geeta Deka, Addl. Sr. Govt. Advocate
Mr. L. John

B E F O R E
HON'BLE MR. JUSTICE NISHITENDU CHAUDHURY

Date of hearing : **24.06.2014**
Date of Judgment & order : **24.06.2014**

JUDGMENT AND ORDER(ORAL)

Heard Mr. T. T. Tara, learned counsel, appearing on behalf of the petitioner. Also heard Ms. Geeta Deka, learned Addl. Senior Government Advocate, appearing on behalf of State Respondents No. 1 & 2 and Mr. Likha John, learned counsel, appearing on behalf of private Respondent No. 5.

2. Appointment of private Respondents No. 4 and 5, as Agricultural Field Assistants(Jr.), on sports quota, has been challenged by an unsuccessful candidate in the present writ petition on the ground that the private Respondents are neither qualified nor were their selection, proper in terms of the law holding the field.

3. One Mr. Atam Bagang, as petitioner, has filed this writ petition, stating that he is a meritorious Football player having represented the State of Arunachal Pradesh in Santosh Trophy Tournament. The petitioner, by annexing certificate of merit, has claimed to be a National Level Football Player. It is the case of the petitioner that there is reservation to the extent of 5% in Government services and posts in the Agriculture Department of the State of Arunachal Pradesh under sports quota. Accordingly, an Advertisement was issued on 11.02.2013 inviting candidates to participate in a walk-in-interview to be held on 22.02.2013 for recruitment to the posts of Agricultural Field Assistant (for short, 'AFA') under sports quota. Specific mention was made in this Advertisement that applications from eligible candidates would be received till 4.30PM on 21.02.2013 along with documents. It was also disclosed therein that any incomplete application or application filed after 4.30 P M of 21.02.2013 shall be rejected. By this Advertisement, it was further notified that candidates between the age limit of 18 to 28 years, as on 01.02.2013, for general category candidates which is 5 years relaxable for Arunachal Pradesh Scheduled Tribe(APST) candidates were eligible to report for the interview, on 22.02.2013, from 9.30AM to 4.30PM, with original certificates. The interested candidates were advised to submit all documents in advance with attested copies of marksheets and certificates along with 2(two) copies of recent passport sized photographs to the Director of Agriculture, Government of Arunachal Pradesh, Naharlagun, upto the aforesaid date and time. The Advertisement was modified by

placing a Corrigendum, on the same date. Be that as it may, the central requirements like last date and time of the receipt of applications remained unchanged. According to the petitioner, he submitted his candidature for the same and produced necessary certificates but the official respondents chose to select the private Respondents No. 4 and 5 for the two posts. The writ petitioner further claimed that both the aforesaid private Respondents are ineligible in terms of the Guidelines issued on 18.7.2001 under the Central Civil Services(Classification, Control & Appeal) Rules, 1965.

4. Mr. Tara, learned counsel for the petitioner, has drawn attention of this Court to the general scheme of appointment under the sports quota as laid down in office memorandum dated 18.7.2001. The eligibility criteria and procedure for appointment are specifically laid down in this scheme under Clause 1 and Clause 5 respectively. Clause 1 and 5 in regard to eligibility and procedure are quoted hereinbelow for ready reference:

“1. Eligibility:

(a) Appointments under these orders can be made of sportsmen considered meritorious with reference to the following criteria:-

(i) Sportsmen who have represented a State or the Country in the National or International competition in any of the games/sports mentioned in the list at Annexure-‘A’.

(ii) Sportsmen who have represented their University in the Inter-University Tournaments conducted by the Inter-University Sports Board in any of the sports/games shown in the list at Annexure-‘A’

(iii) Sportsmen who have represented the State Schools Team in the national Sports/Games for schools conducted by the All India School Games Federation in any of the games/sports shown in the list at Annexure-‘A’.

(iv) Sportsmen who have been awarded National Awards in Physical Efficiency under the National Physical Efficiency Drive.

(b) No such appointments can be made unless, the candidate is, in all respects, eligible for appointment to the post applied for, and in particular in regard to age, education or experience, qualification prescribed under the Recruitment Rules applicable to the post, except to the extent to which relaxations thereof have been permitted in respect of class/category of persons to which the applicant belongs.

2.

3.

4.

5. Procedure:

(a) An application received by the appointing authority or a higher authority from a sportsman belonging to any of the categories mentioned above, any be considered by the Ministries/Department or the Head of the Department as the case may be, in the light of the evidence, which, the applicant may furnish, of his having represented in any of the competitions mentioned in the previous paragraphs, and subject also to the applicant fulfilling the requisite qualifications relating to education, age, etc, as may be laid down in the rules for the post/service for which he is a candidate. Normally certificates awarded by the authorities in Annexure-'B' should alone be taken into account while considering the eligibility as an applicant if terms of above paragraphs. Appointments any be made of such a candidate after the Ministry/Department or Head of the Department, as the case may be, is satisfied about the eligibility of the candidates under these orders as well as his suitability for the post in all respects. Where the appointing authority is subordinate to a Head of Department, such authority may make a recommendation in this regard to the Head of the Department, along with the necessary details, for obtaining his concurrence in the proposed appointment of the candidate.

(b) The orders contained in those OMs will not affect the orders relating to reservation for SC/ST and Ex-Servicemen which may be in force form time to time. In other words, the vacancies filled in accordance with these orders in a year shall be taken into account in calculating the total number of vacancies in the service/post during that year for purpose of applying the reservation orders.

5. The pleaded case of the writ petitioner is that while he submitted his application supported by certificates issued in Annexure -

D Form of the aforesaid schemes along with the application, the Respondent No. 5 did not file any such certificate in Form 2 on 21.02.2013. So far as the Respondent No. 4 is concerned, she did not submit any certificate in Annexure-D and under such circumstances, the private Respondents No. 4 and 5 were ineligible for appointment while the present petitioner was eligible for appointment under the sports quota. With these averments, the petitioner has prayed for quashing and setting aside of the appointment of the private Respondents No. 4 and 5 vide entries No. 38 and 39 of the impugned order, dated 20.08.2013 and also for considering the case of the petitioner for appointment as Agricultural Field Assistant(AFA) under the aforesaid quota.

6. Notices were duly served on official respondents as well as both the private Respondents No. 4 and 5. The State Respondents No. 1 and 2 by filing an affidavit-in-opposition admitted that deadline for submission of documents was 4-30 PM on 21.02.2013 and that interview was held on 22.02.2013. Although it was claimed that selection process was made on the basis of merit yet in Paragraph No. 7 of the said affidavit-in-opposition, the deponent admitted that the official respondents were not aware about the Office Memorandum dated 18.07.2001, in regard to eligibility criteria and procedure for appointment under sports quota.

7. In Paragraph 8 of the affidavit-in-opposition, the Respondent No. 5 admitted that certificate of merit was issued to him, in Form 2, by the General Secretary of Karate Association on 25.02.2013. In course of argument, Mr. Tara, learned counsel for the petitioner, has relied on the documents annexed to the present writ petition to show that the petitioner is eligible in terms of Guidelines dated 18.07.2001. The petitioner's certificates of merit were issued by the State Secretary of

Football Association and it also shows that the petitioner represented the State of Arunachal Pradesh in Santosh Trophy Tournament. Thus, the writ petitioner has established that he is qualified for being considered for appointment under sports quota in terms of O.M. dated 18.07.2001, referred to above.

8. Going by the pleadings made in the writ petition, the private Respondent No. 4 did not submit certificate in Form 2 which is Annexure-D to the Guidelines dated 18.07.2001. As the Respondent No. 4 has not appeared and has not contested the written statement, the allegations made in this writ petition, are deemed to have been admitted and in that view of the matter, it is held that the private Respondent No. 4 does not have qualification in terms of aforesaid O.M. dated 18.07.2001. Coming to the case of private Respondent No. 5, the learned counsel for the petitioner, further submits that the said Respondent No. 5 did not submit the sports quota within the last date and time fixed by the Advertisement. While it is specifically mentioned in the said Advertisement that no application will be received after 4.30PM of 21.02.2013 and that the walk-in-interview was fixed on the following day from 9.30AM to 4.30PM. Records reveal that the private Respondent No. 5 produced the Form 2 on or after 25.02.2013 only. The certificate of merit of Respondent No. 5 is placed at Annexure-8 of the writ petition. It shows that the authorities concerned issued the said certificate of merit to the private Respondent No. 5 by putting his signature on 25.02.2013. Prima facie, this certificate could not have been annexed to the application on 21.02.2013, upto 4.30PM. The application of private Respondent No. 5, therefore, was incomplete on 21.02.2013 at 4.30PM and under such circumstances, the said application being incomplete, was supposed to have been rejected in terms of the Advertisement.

9. The learned counsel for the petitioner has placed reliance in the case of ***Rakesh Kr. Sharma -vs- State (NCT of Delhi) & ors.***, reported in ***(2013) 11 SCC 58***, to show that the eligibility criteria of a candidate is to be considered as on the last date and time fixed for submission of the application forms and not later on. In Paragraph No. 11 of this judgment, the Hon'ble Apex Court observed that there can be no dispute on the settled legal proposition that selection process commences on the date when applications are invited. Any person eligible on the last date for submission of application has a right to be considered against the said vacancies provided he fulfils the requisite qualification. The aforesaid judgment of the Apex Court has been passed after discussing the earlier judgments in this line. The Respondent No. 5 not being in possession of any certificate of merit on 21.02.2013 was prima facie ineligible for the post advertised on 11.02.2013.

10. Mr. John, learned counsel for private Respondent No. 5, submits per contra, that he submitted the documents later on as he was not aware about the necessity of annexing the certificate of merit in Form 2 which is Annexure-D to the O.M. dated 18.07.2001. According to the learned counsel, there was no mention in the Advertisement that the application is to be accompanied by any certificate in Form 2 and it is under such circumstances, the Respondent No. 5 did not annex certificate.

11. Ms. Deka, learned Addl. Senior Government Advocate, contested the instant writ petition, by arguing that the Selection Committee held the walk-in-interview and found the respondents No. 4 and 5 to be eligible for appointment. The selection was made purely on merit and under such circumstances, there was no wrong in making appointment of private Respondents No. 4 and 5 to the post of

Agricultural Field Assistant(Jr.). With these submissions, learned Government Advocate argues that the writ petition is devoid of any merit and the same be dismissed.

12. The Respondent No. 4 has not contested the writ petition. The allegation has been made against her(private Respondent No. 4) that she did not annex the certificate of merit in Form 2 as prescribed in the O.M. dated 18.07.2001. There is no dispute that appointment procedure in the State of Arunachal Pradesh is governed under the provisions of Central Civil Services(Classification, Control & Appeal) Rules, 1965, and there is also no dispute that Guidelines for selection of sports quota as laid down on 18.07.2001 under the Central Civil Services(Classification, Control & Appeal) Rules, 1965, is applicable in the State of Arunachal Pradesh. The eligibility criteria as laid down under Clause 1 of the O.M. dated 18.07.2001 is clear and specific. There is no scope of ambiguity in it. Even in Paragraph No. 5 of the said O.M. dated 18.07.2001 laying down the procedure it is clear that a certificate issued by the authority mentioned in Annexure-B of the Scheme would only be considered for the purpose of deciding the merit of the candidate. Respondent No. 4 did not submit a certificate in such Form. In the absence any material to the contrary it is to be held that she was not eligible in terms of Clause 1 of the O.M. dated 18.07.2001 and once it is so held her appointment is also vitiated.

13. Coming to the case of private Respondent No. 5, it is admitted that the sports certificate shows that the issuing authority signed the certificate on 25.2.2013 and so it could not have been filed on 21.2.2013. The Advertisement as well as counter affidavit filed by the State Respondents No. 1 and 2 bear testimony to the fact that the walk-in-interview was held on 22.02.2013. Paragraph No. 6 of the affidavit-in-

opposition by the State Respondents No. 1 and 2 shows that the deadline for submission of documents was 21.02.2013 at 4.30PM and that the walk-in-interview was held on the next date i.e. on 22.02.2013. On the basis of these 2 materials, it is clear that as on the last date and time of filing the application, certificate dated 25.02.2013 issued to the Respondent No. 5 was not in existence.

14. The cut-off date as to eligibility came up for consideration on a number of occasions before the Apex Court. In the case of ***M. V. Nair v. Union of India*** reported in ***(1993) 2 SCC 429***, the Apex Court held that the eligibility is to be considered as on the last date of receiving the application.

15. In the subsequent case of ***Ashok Kr. Sharma v. Chander Sheikh*** reported in ***(1997) 4 SCC 18***, the same view was reiterated holding that the eligibility as on the last date of receipt of the application forms would be relevant for the purpose of selection and qualification acquired subsequent to the said date would not be considered.

16. Ultimately, in the case of ***Shankar Kumar Mandal v. State of Bihar*** reported in ***(2003) 9 SCC 519***, the Apex Court laid down the principles as to the cut-off date of eligibility, as follows:

- (i) when service rules prescribe a date for the purpose, then the cut-off date shall be the date as mentioned in the service rules;
- (ii) if service rules are silent, then the last date fixed by the advertisement would be the cut-off date for the sake of eligibility; and
- (iii) if no such recital is made, either, in the advertisement or in the service rules, then the last date fixed by the

advertisement for receipt of the applications would be the cut-off date for the sake of deciding the eligibility of a candidate.

17. The aforesaid law has been subsequently followed in the case of **Rakesh Kumar Sharma**(supra) which is relied on by the learned counsel for the petitioner Mr. Tara.

18. On consideration of these judgments rendered by the Apex Court, it appears that the eligibility criteria as on the last date of application would be the cut-off date in the present case. So if the Respondents No. 4 and 5 were eligible in terms of O.M. dated 18.07.2001 on 21.02.2013 at 4.30 PM, they would be eligible. If they acquire eligibility subsequently by obtaining certificate from the appropriate authority, then irrespective of whether walk-in-interview was subsequently held or not, the private Respondents No. 4 and 5 would not be eligible.

19. Having so noticed, there is no dispute in the present case, that Respondents No. 4 and 5 were ineligible as on the date of walk-in-interview, as well as the last date of filing of applications and that on the other hand, the petitioner was eligible. So, selection of the private Respondents No. 4 and 5 is vitiated by non-consideration of the relevant aspect as well as non-compliance of the guidelines holding the field. The appointment of private Respondents No. 4 and 5, therefore, cannot be sustained. Their appointments are set aside.

20. Since the petitioner is found to be eligible in terms of the O.M. dated 18.07.2001, holding the field, the State Respondents shall consider the case of the petitioner for appointment to one of the two

posts referred to above. This shall be done within two months from the date of submission of certified copy of the judgment.

21. With the above directions and observations, this writ petition allowed. No order as to cost.

JUDGE

Bikash