

**ARUNACHAL PRADESH PUBLIC  
SERVICE COMMISSION**



**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:  
MANIPUR:TRIPURA:MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR BENCH**

**W.P.(C) No.34(AP) OF 2002**

**D.D. 5.2.2002**

**The Hon'ble Mr. Justice P.G.Agarwal**

**Sri Lishi Lal ... Petitioner**

**Vs.**

**The State of Arunachal Pradesh ... Respondent**

**Recruitment : Cutoff marks for being called for viva-voce depending on number of candidates and vacancies whether valid? – Yes**

Petitioners participated in the selection process for the post of Assistant Engineer (Civil) and appeared for personality test but not called for viva-voce as he did not qualify in the written test - P.S.C. contended that the cutoff marks depending /on the number of candidates and vacancies fixed – High Court in view of the decision in 1987 (Supp) SCC 401 held that the petitioner having failed in the written examination cannot claim to be called for viva-voce test.

**Cases referred:**

1987 (Supp) SCC 401 – State of U.P. vs. Rafiquddin & Ors.

**ORDER**

1. Heard Mr.C.Baruah, learned counsel for the petitioner and Mr.T.Pertin, learned counsel for the Arunachal Pradesh Public Service Commission and also the learned Govt.Advocate.

2. The petitioner Sri Lishi Lal had participated in the selection process for the post of Assistant Engineer (Civil) conducted by the Arunachal Pradesh Public Service Commission, for short, the commission as per the advertisement issued, both written test and Viva-Voce test were to be conducted after final selection. Petitioner appeared in the written test but as he did not qualify he

was not called for the viva voce test. Petitioner has therefore filed the present application for a direction to the respondent Commission to allow him to appear in the viva voce test.

3. The plea raised by the petitioner is that the final selection is to be made on the basis of written examination and Viva-Voce test and as no qualifying marks were laid down and communicated to the petitioner, the petitioner cannot be thrown out from the purview of selection on the basis of the written test only.

4. The respondent Commission has filed an affidavit in-opposition stating interalia that this being the competitive examination for filling up 15 posts of Assistant Engineer (Civil), the total number of candidates selected for viva voce was 48. It was further averred as follows:

“ The Commission adopts a cut-off marks confidentially depending on the number of candidates and vacancies and the ratio to be maintained. It is unjustified to expect the Commission to call the entire candidates who has appeared in the written test for the Viva-Voce”.

5. So far the plea of the petitioner for laying down any qualifying marks or for informing the candidates about such marks was considered by the Apex Court in the case of State of U.P. vs. Rafiquddin and others, reported in 1987(Supp)SCC 401 and the Apex Court observed:

“The Division Bench of the High Court observed that the Commission had no authority to fix any minimum marks for the viva voce test and even if it had such a power it could not prescribed the minimum marks without giving notice to the candidates. The Bench further observed that if the Commission had given notice to the candidates before the steps for holding the competitive examination were taken the candidates may or may not have appeared at the examination. In our opinion the High Court committed a serious error in applying the principles of natural justice to a competitive examination. There is a basic difference between an examination held by a college or university or examining body to award degree to candidates appearing at the examination and a competitive examination. The examining body or the authority prescribes minimum pass marks. If a person obtains the minimum marks as prescribed by the authority he is declared successful and placed in the respective grade according to the number of marks obtained by him. In such a case it would be

obligatory on the examining authority to prescribe marks for passing the examination as well as for securing different grades well in advance. A competitive examination on the other hand is of different character. The ————— ————  
— the select most suitable candidates for appointment to public services. A person may obtain sufficient highly marks and yet he may not be selected on account of the limited number of posts and availability of persons of higher quality. Having regard to the nature and characteristics of a competitive examination it is not possible nor necessary to give notice to the candidates about the minimum marks which the Commission may determine for purposes of eliminating the unsuitable candidates. The rule of natural justice does not apply to a competitive examination”

6. In view of the said proposition of law, the petitioner having failed in the written examination, the Commission may not call him in the viva voce test and he is not entitled to any relief in this writ petition. The writ petition is accordingly dismissed. Costs easy.

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**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR TRIPURA  
MIZORAM AND ARUNACHAL PRADESH)**

**(ITANAGAR BRANCH)**

**W.P.(C) No.330 (AP)/2003 & connected cases**

**D.D. 27.4.2004**

**The Hon'ble Mr. Justice B.Lamare**

**Smt. Mhalo ali & Ors. ... Petitioners**

Vs.

**The State of Arunachal Pradesh & Ors. ... Respondents**

**Recruitment :Revision of select list:**

Recruitment to the post Arunachal Pradesh Civil Services Group A & B – Petitioners were included in the select list of 98 candidates published on 26.6.2003 – In view of O.M. dated 10.10.2000 providing recruitment to vacancies as per 80:20 ratio of reservation policy of the Government the select list was published as per notification dated 5.11.2003 – Petitioners were excluded from the revised select list – High Court in view of the decision in Ashok Kumar Yadav Vs. State of Arunachal Pradesh & Ors. held that the O.M. dated 10.10.2000 pursuant which the select list was revised was not applicable – Consequently quashed the revised select list dated 5.11.2003 and directed to issue appointment orders to petitioners as per the result published on 26.6.2003.

**Cases referred:**

1. (2002) 3 GLR 412 – Ashok Kumar Yadav vs. State of Arunachal Pradesh & Ors.
2. 2002 (1) GLT 223 – State of Arunachal Pradesh Vs. Ashok Kumar Yadav & Ors.

**ORDER**

1. Heard Mr. R Deka, learned counsel for the petitioners in WP(C)363 (AP)2003, Mr. K.Ete, learned counsel for the petitioner in WP(C) 360 (AP)2003 and Mr. J.K.Pangjeng, learned counsel for the petitioners in WP(C) 367 (AP) 2003 and Mr.J.Hussain, learned Counsel for the petitioners

in W.P.(C) 81 (AP) 2004. Also heard Mr. BL Singh, learned Sr. Govt Advocate for the State respondents and Mr. T Pertin, learned counsel for the Arunachal Pradesh Public Service Commission.

2. These 4 (four) writ petitions are taken up together as they relates to the same selection and the same questions of law and facts are involved.

3. Briefly stated the fact in that the Arunachal Pradesh Public Service Commission, for short APPSC issued an advertisement No. PSC-R/31-2000 dt 8/6/2001 inviting applications for recruitment of 63 posts of the following Grade – A and B posts in the State Government:-

(A)	Arunachal Pradesh Civil Services (Entry Grade)	27 posts
(B)	Finance and Accounts Officer /Treasury Officer	6 posts
(C)	Dist Information and Public Relations Officer	3 posts
(D)	Assistant Registrar of Cooperative Society	4 posts
(E)	Dist Supply Officer	4 posts
(F)	Dist Arts and Culture Officer	6 Posts
(G)	Child Development Project Officer	6 Posts
(H)	Assistant Director (Textile & Handicraft)_	1 Post
(I)	Assistant Director (Industries)	4 Posts
(J)	Assistant Employment Officer	2 Posts

4. In the advertisement, it is prescribed that 80% of the posts will be reserved for APST Candidates and the rest 20% will be unreserved (open competition) for 63 numbers of posts. The number of posts was subsequently increased to 98.

5. The petitioners having required qualification applied for the posts and after completions of both the written examination and the viva voce/interview the APPSC published the list of selected candidates for all the 90 posts.

6. The name of the petitioners in WP (C) 363 (AP) 2003 appeared at Sl.No. 40, 43, 45, 75 and 88. The petitioner No.1 in WPC (C) 363 (AP) 2003 was selected for the post of Child development

Project officer and was placed at Sl.No. 1 of the list for CDPO. The petitioner No. 2 was selected for the post of Assistant Director of Industries and her name was shown at Sl.No.1 for the post of Assistant Director of Industries. The petitioner No. 3 was selected for the post of Entry Grade and his name appeared at Sl.No 39 of the list for Entry Grade. The petitioner No.4 was selected for the post of Finance & Accountant Officer /Treasury Officer and his name appeared at Sl.No. 2 for this post. The petitioner No.5 was selected for the post of District Information and Public Relation Officer and her name appeared at Sl.No.4 for the post of D.I. P.R.O.

7. The petitioner in WP(C) 330 (AP) 2003 were selected and their names were shown at Sl.No. 51, 53, 65, 68 and 94 of the select list. The petitioner No.1 was selected for the post of Child Development Project Officer and her name appeared at Sl.No. 10 of the list for this post. The petitioner No. 2 was selected for the post of District supply officer and her name appeared at Sl.4 of the list for this post. The petitioner No. 3 was selected for the post of Circle Officer and his name appeared at Sl No. 40 of the list of Entry Grade. The petitioner No.4 was selected for the post of Circle Officer and also the petitioner No. 5 was selected for the post of Entry Grade. And their name appeared at Sl No.53 and 56 of the list of Circle Officer.

8. The petitioner in WP(C) 367 (AP) 2003 was shown at Sl.No.49 of the select list and he was selected for the post of Entry Grade and his name appeared at Sl.No.43 in the list for this post.

9. The petitioners in WP(C) 81 (AP) 2004 were selected and their names were shown at Sl.No. 38 and 42 of the select list. The petitioners No.1 was selected for the post of Entry Grade and his name appeared at Sl.No. 36 of the list for this post. The petitioner No.2 was selected for the post of Assistant Registrar of Coop Society and her name appeared at Sl.No. 1 of the list for this post.

10. Before any appointment could be made to the posts as per selection and recommendation by the APPSC some of the unsuccessful candidates approached this court in WP(C) No.125 (AP)2003 along with that writ petition a Misc case No. 708/2003 was also filed and this court by an interim order dated 30/5/2003 granted interim order and no appointment could be made from the select list. However an application for modification alteration or vacation of the interim order was made by the State respondents in Misc Case No. 159(AP) 2003and this court by order dated 16-09-2003 vacated the interim order passed by this Court. While vacating the interim order, this



Court also had directed that all appointments made on the basis of the selection would, however abide by final orders that would be passed in the writ petition.

11. After the interim order was vacated by this Court, the APPSC published the revised result Notification dt: 5-11-2003. The ground for publishing of the revised result is that at the time of publication of the result on 26-6-2003 the office memorandum No. OM-2/2000 dt 10-10-2000 providing allotment of vacancies as per 80:20 ratio of the reservation policy of the Government was not taken into consideration by the APPSC. By the said revised result Notification the petitioner who were non APST Candidates were excluded from the list of successful candidates. However 2(two) non-APST candidates were adjusted against the unreserved vacancies at 55 and 60 roster point. All the writ petitioners in these writ petitions have, therefore assailed the said revised Notification dt 5/11/2003 published by the APPSC.

12. The case of the petitioners are that according to the result Notification dt 26-6-2003 98 candidates were shown to have been successful for the posts as per the advertisement issued by the APPSC. The names of the petitioners were also shown in the said result Notification. The selection made by the APPSC was based on the roster system of 100 point roster system as per the Notification No. OM-38/76 (Vol-III) pt-1 dt 4-5-2001. The purpose for introducing this 100 point roster system in to fulfill the claims of the members of the SC and ST of the state for their adequate representation in the administration of t he State. The selection made by the APPSC was also based on this basis. It is also the case of the petitioners that the revised result Notification dt 5-11-2003 by canceling the earlier result Notification dt 26-6-2003 is totally wrong and against the 100 point roster system as per the Notification dt 4-5-2001. According to the petitioner the Office memorandum dt 10-10-2000 is not applicable in the instant case. The petitioner also contended that by revising the select list of 26-6-2003 the APPSC has selected only 34 candidates leaving aside other successful candidates including the petitioners. This was done with an ulterior motive to fill up the remaining vacancies by depriving the petitioners of unreserved quota meant for non AP ST candidates. The petitioners contention is also that the original result notification clearly indicates that selection was made for 98 posts but the said result notification was cancelled and a revised result notification was issued which is totally illegal and against the reservation policy of the Govt as indicated in the advertisement.

13. The respondents in their affidavit in opposition resisted the claim of the petitioners and stated that the petitioners have attempted to misinterpret the meaning of 20% unreserved quota. According to the respondents 20% of unreserved posts are meant for selection on the basis of merits of the competitive examination where all categories of candidates including the candidates belonging to APST are eligible to compete in the examination. This is clear from the office Memorandum dt: 10.10.2002. The respondents also contended that the 100 point roster appended with the reservation policy of the State contained in Office Memorandum dt : 4.5.2001 is to identify the vacancy position in respect of the posts, both in reserved and unreserved point of the roster maintained by the department. The claim of the petitioners that unreserved point as mentioned in the roster should be strictly followed by the APPSC in determining the merit position is absolutely wrong. The APPSC is to maintain the actual merit point obtained by each candidate separately as mentioned in the Office Memorandum dt 10-10-2000. therefore according to the respondents the merit position is to be maintained as per the performance of each and every candidate in the preliminary main and viva-voce test conducted by the APPSC. Since the petitioners could not secure higher position in the merit list in the said examination therefore, their case could not be considered by relaxed standard as is done in the case of reserved category. Moreover the Office memorandum dt 10-10-2000 was based on the Govt of India Office Memorandum dt 22-5-1989.

14. The respondents also contended in their affidavit in opposition that as the APST candidates were not adequately represented in the service of the State, therefore 80% of the posts were reserved for APST candidates vide Notification dt 4-5-2001 and this reservation policy was specified in the advertisement dt 8-6-2001.

15. In order to appreciate the case in hand the revised result Notification is reproduced below:-

ARUNACHAL PRADESH  
Public Service Commission  
ITANAGAR

No.PSC-R/31/2000 (Vol.III)

Dated Itanagar, the 5<sup>th</sup>  
November, 2003.

**REVISED RESULT NOTIFIACATION**

In view of the personnel Dept's letter No. PERS-14 /2003/782 dt 22<sup>nd</sup> October

2003 the commission reviewed the select list of candidates who have been declared successful and recommended for appointment to Arunachal Pradesh Civil Services (EG) and other Arunachal Pradesh General Services vide this commission's Notification No. PSC-R/31/2000 (vol. III) dt 26<sup>th</sup> June 2003.

After thorough examination and interpretation of the Government's office Memorandum No. OM-12/2000 dt 10<sup>th</sup> October 2000 regarding allotment of vacancies as per 80:20 ratio reservation policy of the Government the Commission has revised and amended the Select list of the Candidates for appointment.

The two non APST candidates namely, Pranjal Bora and Vishwadeep Chello have been adjusted against unreserved vacancy at 55 and 60 roster point.

A separate list of selected candidates with the order at their choice/preference of posts will be available with the Govt.

The earlier result of the APPSCCE as notified vide No. PSC-R/31/2000 (Vol.III) dt 26<sup>th</sup> June 2003 stands vacated.

The list is in order of merit.”

16. From the above Notification it is seen that the APPSC has revised the result Notification dt 26-6-2003 on the basis of the Office Memorandum dt 10-10-2000. In the Office Memorandum dt 10-10-2000 the Govt of India Office Memorandum No. 36012/13/88 Estt(SCT)dt 22-5-89 was reproduced and the departments were directed to follow the said Govt. of India's Office Memorandum. By this office Memorandum, 50% of the posts in Group A are to be treated as reserved and 50% as unreserved 20% of the posts in Group B and C are category posts. The illustration shows in Group A posts are as follows :-

ILLUSTRATION	
Points in the Roster	Whether reserved or Unreserved
3	4
1	Reserved
2	Unreserved
3	Reserved
4	Unreserved
5	Reserved
6	Unreserved
7	Reserved
8	Unreserved
9	Reserved
10	Unreserved

The illustration for Group B & C posts are as follows :-

Points in the Roster	Whether reserved or Unreserved
3	4
1	Reserved
2	Reserved
3	Reserved
4	Reserved
5	Unreserved
6	Reserved
7	Reserved
8	Reserved
9	Reserved
10	Unreserved

If the illustration as shown above for Group A posts is to be taken as per the reservation policy after each reserved post there is unreserved post next. So also for Group – B and C Posts after every 4 reserved posts 1 post is unreserved. Therefore, there will be more unreserved posts in Group – A posts. However, this court in the Case of Shri Ashok Kr. Yadav petitioner vrs State of Arunachal Pradesh and ors reported in (2002) 3 GLR 412 by judgment and order dt 8-2-2002 has held that the Govt of India's office Memorandum dt 22-5-89 which was reproduced in the office Memorandum dt 10-10-2002 is not applicable in that case. The said judgment and order of the learned single judge was also upheld by a Division Bench of this court in State of Arunachal Pradesh. Appellant vrs Ashok Kr. Yadav & ors. Respondents reported in 2002 (1) GLT 223. in the instant case also the said office Memorandum is not applicable in respect of reservation policy of the State.

17. The Government policy which is applicable in the instant case in respect to Group- A post in the Notification Dt: 6-5-2001 and the policy of reservation for Group B posts is the Notification No.OM-13/90 dt :26-3-91 which was upheld by the division bench of this court in the case of State of Arunachal Pradesh vrs Ashok Kr. Yadav & Ors (Supra). The Notification dt 4-5-2001 in respect of Group A posts and the Notification dt 26-3-1991 in respect of Group B posts are on the same basis of 100 points Model Roster of direct recruitment for the posts in Group-A and Group – B posts respectively. In both the Notification dt 4-5-2001 for Group A posts and Notification dt: 26-3-91 for Group B posts, the Model 100 points Roster is as follows:-

A MODEL 100 POINT ROSTER FOR GROUP 'A' POSTS IN WHICH  
ARE TO BE FILLED UP BY DIRECT RECRUITMENT

Point in the Roster	Whether Reserved or Unreserved	Point in the Roster	Whether Reserved or Unreserved
1	Reserved	51	Reserved
2	Reserved	52	Reserved
3	Reserved	53	Reserved
4	Reserved	54	Reserved
5	Unreserved	55	Unreserved
6	Reserved	56	Reserved
7	Reserved	57	Reserved
8	Reserved	58	Reserved
9	Reserved	59	Reserved
10	Unreserved	60	Unreserved
11	Reserved	61	Reserved
12	Reserved	62	Reserved
13	Reserved	63	Reserved
14	Reserved	64	Reserved
15	Unreserved	65	Reserved
16	Reserved	66	Reserved
17	Reserved	67	Reserved
18	Reserved	68	Reserved
19	Reserved	69	Reserved
20	Unreserved	70	Unreserved
21	Reserved	71	Reserved
22	Reserved	72	Reserved
23	Reserved	73	Reserved
24	Reserved	74	Reserved
25	Unreserved	75	Unreserved
26	Reserved	76	Reserved
27	Reserved	77	Reserved

Point in the Roster	Whether Reserved or Unreserved	Point in the Roster	Whether Reserved or Unreserved
28	Reserved	78	Reserved
29	Reserved	79	Reserved
30	Unreserved	80	Unreserved
31	Reserved	81	Reserved
32	Reserved	82	Reserved
33	Reserved	83	Reserved
34	Reserved	84	Reserved
35	Reserved	85	Reserved
36	Reserved	86	Reserved
37	Reserved	87	Reserved
38	Reserved	88	Reserved
39	Reserved	89	Reserved
40	Unreserved	90	Unreserved
41	Reserved	91	Reserved
42	Reserved	92	Reserved
43	Reserved	93	Reserved
44	Reserved	94	Reserved
45	Reserved	95	Reserved
46	Reserved	96	Reserved
47	Reserved	97	Reserved
48	Reserved	98	Reserved
49	Reserved	99	Reserved
50	Unreserved	100	Unreserved

18. In view of the above reservation policy made by the Government in respect of Group A And Group B points the revised result Notification dt 5-11-2003 by which the result was revised on the basis of the office Memorandum dt 10-10-2000 was wrongly made as the Office Memorandum dt 10-10-2000 is not applicable in the instant case.

19. For the aforesaid reasons the revised result Notification dt 5-11-2003 is hereby set aside and quashed.

The respondents are directed to issue appointment letters to the petitioners to their respective posts to which they were selected as per the result Notification dt 26.6.2003. If any appointment is made on the basis of the revised Notification dated 5-11-2003, such appointments shall be cancelled as per the order passed by this court on 16-9-2003 in Misc Case No. 159 A (AP)/2003 arising out of W.P.(C) No.125 (AP)2003. The appointments to the petitioner shall be made within a period of 1 (one) month from the date of receipt of this order by the respondents No. 1 and 2, the chief Secretary to the Govt. of Arunachal Pradesh and the Secretary (Personnel) Department of Personnel Govt. of Arunachal Pradesh, Itanagar.

These writ petitions are accordingly disposed of. However considering the facts and circumstances of the case, I pass no order as to the costs.

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**THE GAUHATI HIGH COURT  
ITANAGAR PERMANENT BENCH  
NAHARLAGUN  
W.P.(C) 200(AP) 2003  
D.D. 17.5.2005  
The Hon'ble Mr. Justice Ranjan Gogoi**

**Smt.O.Gyati & Anr.**                   ...           **Petitioners**

Vs.

**State of A.P. & Ors.**                   ...           **Respondents**

**Recruitment to Arunachal Pradesh Civil Services Group A & B Posts:**

**5% reservation under sports quota:**

Writ petitioners who were participated in the selection process held pursuant to advertisement dated 8.6.2001 were not selected – Challenged claiming that they ought to have been selected under 5% sports quota in terms of O.M. dated 14.5.2001 – High Court in view of the submission made on behalf of the State that in accordance with the policy in force 5% of vacancies in all departments are required to be held back for being filled up under sports quota from the normal recruitment procedure and that 5% of reservation vacancies were excluded from the present recruitment also dismissed the writ petition.

**ORDER**

Heard Mr.N.Grayu, learned counsel for the petitioners and Mr.C.K.Sarma Baruah, learned Advocate General, Arunachal Pradesh, appearing on behalf of the official respondents. Also heard Mrs.T.Pertin, learned counsel appearing for the respondent No.3.1.c.A.P.P.S.C.

The writ petitioners participated in the selection held pursuant to an advertisement dated 8.6.2001, issued, for filling up of vacant posts in the Arunachal Pradesh Civil Service Group-I & II. They were not successful in the preliminary examination held and, therefore, could not take part in the subsequent segments of the selection process. Thereafter, they have instituted the present writ application calling into question the selection procedure as well as the list of the

successful candidates prepared by the Public Service Commission on the ground that the advertisement issued did not provide for any reservation for sports person, though, in terms of the Government policy in force, 5% of the vacancies should have been earmarked for being filled up by meritorious sports persons, Reliance in this regard has been placed on an office Memorandum dated 14.5.2001 which, the writ petitioners contend, provide for reservation of 5% of the vacancies in favour of meritorious sports persons.

I have read and considered the terms of the office Memorandum dated 14.5.2001 and an examination of the said office Memorandum makes it clear that 5% of the vacancies in group-B, C and D posts (in the present case the Court is concerned with only Group-B posts) against direct recruitment quota is earmarked for being filled up from meritorious sports persons. The office Memorandum dated 14.5.2001 further visualizes that the aforesaid 5% quota is to be filled up by the appointing authorities/Head of the Department from meritorious sports persons belonging to APST in relaxation of the normal recruitment procedure applicable to such posts. Not only does the office Memorandum dated 14<sup>th</sup> of May 2001 so indicated, what has been mentioned in the affidavit filed by the State respondent is that, in accordance with the policy in force, 5% of the vacancies in all Ministries/Departments are required to be held back, for being filled up by meritorious sports persons, from the normal recruitment procedure. It is further stated that in the present selection process 5% of the vacancies were excluded from the purview of the competitive examination held by the Public Service Commission, The learned Advocate General for the State has made a further statement that if any vacancy against the 5% quota for sports persons is available as on date, the petitioners, notwithstanding their lack of success in the competitive examination, may apply for the said posts.

In view of the what has been noticed above and particularly the terms of the policy and the statement made in the affidavit filed by the respondents to the effect that the quota reserved for meritorious sports persons was excluded from the purview of the competitive examinations held by the Public Service Commission, this Court is unable to recognize any infirmity in the selection held or the select list prepared on the basis of the contentions advanced in the present writ petition. Consequently, the writ petition is without any merit and is accordingly dismissed. However, having regard to the facts and circumstances of the case, there shall be no order as to costs.

**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM ,NAGALAND,  
MEGHALAYA,MANIPUR,TRIPURA,MIZORAM AND ARUNACHAL PRADESH)**

**W.P. (C) NO- 195 (AP) OF 2003**

**D.D.18.5.2005**

**The Hon'ble Mr. Justice Ranjan Gogoi**

**Shri Rinchin Leta**

**... Petitioner**

**Vs.**

**The State of Arnachal Pradesh & Ors. ... Respondents**

**Reservation for Physically Handicapped:**

In the recruitment for Arunachal Pradesh Civil Services Group A & B as per advertisement dated 8.6.2001 no reservation for P.H. made – Petitioner a physically handicapped candidate with loco motor disability challenged non reservation for P.H.- As per interim order dated 27.6.2003 the High Court directed to keep one post vacant for persons with loco motor disability – In view of the stand taken by both State and P.S.C. that reservation should have been made for P.H. as per Persons with Disabilities Act the High Court disposed of the writ petition with a direction to pass necessary order for appointment of most meritorious of the candidates against the post that has been directed to be kept vacant as per order dated 27.6.2003.

**ORDER**

The writ petitioner, who is a physically handicapped person, complains of an alleged violation of his right to receive fair consideration for appointment to the Arunachal Pradesh Civil Service, Specifically, the aforesaid grievance has been raised on the ground that in the advertisement issued for filling up vacant in the Arunachal Pradesh Civil Service (Group A & B) pursuant to which selection have been made, reservations as required to be provided under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as the Act) have not been made and consequently the right of the petitioner to be considered against the posts which were required to be kept reserved under the provisions of the Act have been infringed.

2. By an advertisement dated 8.6.2001, application were invited for filling up as many as 63 vacant posts in the Arunachal Pradesh Civil Service (Group – A& B). It is not disputed at the Bar that after the advertisement was so issued on 8.6.2001, 7 posts were taken out of the purview of the selection process and subsequently a total of 43 other posts were requisitioned by the State to be filled up on the basis of the selection initiated by the Public Service Commission. In this manner, a total of 100 posts in the Arunachal Pradesh Civil Service (Group- A & B) were covered by the recruitment process initiated by the Public Service Commission though it appears that two of the aforesaid posts in the cadre of Assistant Director, Textiles, were subsequently kept outside the purview of selection under court's orders, The petitioner submitted his application pursuant to the advertisement issued and qualified in the preliminary as well as the main written examination held. Having qualified in the main written examination, he was called for the viva voce test, wherein he participated However, in the select list prepared by the Public Service Commission, the name of the petitioner did not figure. Consequently, the present writ petition has been filed contending that a minimum of 1% of the available posts should have reserved for physically handicapped candidate of the category to which the petitioner belongs, i.e., Orthopaedically handicapped persons having loco motor disability/cerebral palsy, as required under the provisions of the Act in force. On the above basis, a case has been sought to be built up by the petitioner that had the reservation as required by the provisions of the Act been made, the petitioner would have been considered against the specific reserved category of candidate of physically handicapped, in which event the petitioner claims he would have been selected and consequently appointed on the basis of inter se merit of the physically handicapped candidates.

3. Having noticed the parameters of the challenge made in the writ petition, this Court may now proceed to understand the projections made by the State and the Public Service Commission before this Court in the affidavits filed. The State had not denied and disputed that reservation under the provisions of the Act are required to be made and in fact has enclosed two circulars dated 20.2.2000 and 23.5.2000 (Annexure-B and C to the counter affidavit of the State), which circulars have been issued by the competent authority of the State requiring the appointing authorities to adhere to the reservation provided by the provisions of the Act. In fact, the stand taken by the State Government in the affidavit filed is that reservation, as required under the provisions of the Act. Have directed by the State to be made available in all deserving cases in

accordance with the principles laid down in different memorandums issued by the Government of India in this regard. The instant advertisement was issued by the Public Service Commission on the basis of requisition/requisitions placed by the State and it was, therefore, the duty of the Public Service Commission to stipulate the availability of reservations in accordance with the provisions of the Act and proceed to make its recommendation for appointment on the basis.

4. The Public Service Commission, in the affidavit filed, has again not denied and disputed the applicability of the provisions of the Act with regard to reservations for different categories of physically handicapped persons. The stand taken in that in the Service rules in force, there is no specific provision for reservation to physically challenged persons and the State also had not intimated the necessity of making. Reservations for physically handicapped persons in the requisition placed before the Public Service Commission. Accordingly, the Public Service Commission had proceeded in the matter without making any provision for reservation to physically handicapped persons.

5. The stand taken by the State Government and the Public Service Commission, as noticed above, therefore, is not in variance with the pleadings of the writ petitioner and the oral arguments advanced. In fact, the writ petitioner as well as the State Government and the Public Service Commission have virtually proceeded in the instant matter by agreeing before the Court that reservation of vacancies in the Civil Service as per the provisions of the Act is required to be made and the same had, in fact, not been provided in the recruitment initiated by the Public Service Commission pursuant to the advertisement dated 8.6.2001.

6. Having noticed the respective stand of the parties before the Court, this Court may now briefly note what has been provided by the Act. The provisions relevant to the instant case are contained in Chapter-vi of the Act. Section 32 enjoins upon the appropriate government a duty to identify posts in the establishments which can be reserved for persons with disability and to review the same periodically at intervals not exceeding 3 years. Under Section 33 of the Act, a minimum of 3% reservation is required to be made for physically challenged persons belonging to the following 3 categories'

- (i) Blindness or low vision'

- (ii) Hearing impairment;
- (iii) Loco motor disability or cerebral palsy.

The break up of reservations that has to be provided is a minimum of 1% for each category. The proviso to Section 33 of the Act, however, empowers the appropriate government to exempt any establishment from the provisions of Section 33, if the appropriate government is satisfied that having regard to the nature of work involved in such establishment such exemption is necessary or required. It will also be appropriate at this stage to put on record that the Government of India by Office memorandum bearing No 36035/9/98 Estt (res) dt. 04-06-1998 has laid down the minimum degree of disability that a person must suffer from for being eligible for getting employment against a post earmarked/reserved for a physically handicapped person.

7. The petitioner belongs to the category of Orthopaedically handicapped person and has been certified by the Board of Doctors constituted by the Social Welfare Dept, to be suffering from Orthopaedic Disability to the extent of 50% He, therefore claims to be a victim of loco motor disability. Under the provisions of the Act and the various circulars issued by the Central Government as well as the State Government to give effect to the provisions of the Act, reservation of vacancies in the State civil Services to the extent of 1% is required to be made for persons suffering from locomotor disability. Keeping in mind the total number of vacancies involved in the selection process undertaken by the Public Service Commission, the percentage prescribed worked out in figures, will be one post. This court may therefore, proceed on the basis that in the recruitment initiated and undertaken by the State Public Service Commission for filling up vacant posts in the State Civil Service (Groups A & B), one post was required to be kept reserved for physically challenged persons of the particular category, i.e, those suffering from locomotor disability. All physically challenged persons, belonging to the said category, who may have applied pursuant to the advertisement issued and had taken part in the selection, in the event all or any of them have not been included in the select list prepared are required to be considered against the said reserved post on the basis of their inter se merit within the particular group of physically handicapped persons and thereafter the recommendations of the Public Service Commission were required to be made by categorizing such physically handicapped persons as a separate group. The same has not been done in the present case and, therefore this Court can

reasonably construe the failure of the respondents to so act to be in derogation of the rights of the petitioner under the provisions of the Act, which may have impaired the petitioner's right to fair consideration of his case. Though a claim has been made on behalf of the petitioner, at the hearing, that he is the only candidate with loco motor disability, who has been selected by the Public Service Commission, the Court would certainly not like to proceed on the basis of aforesaid statement. Instead what would be just and appropriate for the Court is to direct the respondents to determine the relative merit of all candidates with loco motor disability, who may have appeared in the competitive examination and who had been selected and thereafter prepare a list of such candidates in order of merit by taking into account the inter se merit of all such candidates and thereafter send its recommendation to the government. This Court would also like to make it clear that the expression "SELECTED" used hereinabove must necessarily mean those physically challenged candidates who had succeeded in the main written examination and had been called for interview but whose names have not been included in the select list because of the inherent restrictions in the select list that had to be imposed in view of the number of vacancies available. A physically handicapped candidate who has already been selected on his own merit and on this basis has already been included in the select list prepared, needless to say, will not compete against the reserved seat for physically handicapped candidate. Once the recommendations of the Public Service Commission are received by the State Government, the State Government will pass necessary orders for appointment of most meritorious of the candidates recommended against the post that has been directed by the Court to be kept vacant by its order dated 27-06-2003. The directions of this Court will be required to be carried out by the Public Service Commission and thereafter by the State authorities as expeditiously as possible and in any case within a period of 3 (three) months from the date of receipt of a certified copy of this order.

8. Consequently and in the light of the foregoing discussions, this Writ Petition shall stand allowed to the extent indicated above.

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**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR BENCH**

**W.P.(C) NO.166 (AP)2003 & Connected cases**

**D.D. 20.5.2005**

**The Hon'ble Mr.Justice Ranjan Gogoi**

**Shri Padi Grayu & Ors.   ...             Petitioners**

**Vs.**

**The State of Arunachal Pradesh & Ors.     ...             Respondents**

**Recruitment :Irregularities in recruitment process:**

Petitioners who are unsuccessful in the recruitment for Arunachal Pradesh Civil Services Group A & B held in the year 2001 challenged the select list on several grounds alleging irregularities in the selection process – High Court after examining each of the defects alleged found not valid – Hence writ petitions dismissed.

**ORDER**

All the 3 writ petitions being similar, were considered together are being disposed of by this common judgment and order.

2. The petitioners, in each of the cases, were candidates in the combined Competitive Examination held in the year 2001 by the Arunachal Pradesh Public Service Commission (hereinafter referred to as the Commission.) for filling up of vacant posts in the Arunachal Pradesh Civil Service (Group –A and B). While the writ Petitioner in W.P.C.No.166 (AP) 2003 had qualified up to the stage of the main written examination but was not called for interview. The four petitioners in WP(C) No.214(AP) 2003 had taken part in the viva voce segment of the selection but their names were not included in the select list of successful candidates recommended for appointment. The sixteen petitioners in W.P.(C) No.125 (AP) 2003 like the petitioner in WP(C) No.166 (A) 2003, did not qualify for the viva voce test. Being unsuccessful in the manner indicated, the writ



petitioners have assailed the selection held by the Public Service Commission and the select list of successful candidates published by it and the recommendations sent to the Government.

3. Largely similar grounds and contentions have been advanced in support of the challenge made in all the cases, which reduced to its essence, can be conveniently categorized in the following order:-

- (i) Firstly it is urged that under the combined Competitive Examination Rules, 2001, though it was incumbent on the Commission to call the candidates for the interview in the ratio between 2:1 and 3:1 (twice /thrice as against the vacancies available), the Commission in the instant case, had called a disproportionate number of candidates and had fixed a percentage of 40.8 marks to be eligible to be called for interview.
- (ii) Answer Scripts of the candidates have been changed and such Answer Scripts contain double markings.
- (iii) The petitioners have been awarded low marks;
- (v) The relatives of people in power and the Chairman and the Office bearers of the Public Service Commission have been selected.
- (vi) The question papers did not contain any serial number and there was also no indication in the question papers as to the examination, for which it was meant.
- (vii) English was not made a compulsory subject in the examination.

4. The Commission has filed separate affidavits in each of the cases. In the affidavits filed, the Commission has stated that in the selection in question, the Commission, in its wisdom, had decided to follow the ratio of 2.5:1 for the purpose of determining the number of candidates to be called for interview. Accordingly, there being 100 posts covered by the selection, 250 candidates were called. There was no qualifying marks fixed for being called for the interview but the last

candidate called for interview had secured 40.8% marks, which is a matter of co-incidence. The allegations of the Answer Scripts being changed and there being anomalies in the marking, as alleged by the petitioner(s), has been denied. In so far as evaluation of the answer scripts is concerned the Public Service Commission, in the affidavit filed, has stated that such evaluation was left to be done by the renowned academicians and the Public Service Commission has no role to play in the matter of marks awarded by the examiners. The Commission in the affidavit filed has also stated that the selection was made as per merit and that the question papers were printed by the Examination Branch of the Public Service Commission and there were no anomalies whatsoever on this score.

5. The power of the writ Court to scrutinize selection for appointments made by the prescribed authority, which power has been sought to be invoked by the petitioners in the present cases, has to be understood to be a limited and circumscribed power. The writ Court cannot covert itself into an appellate body and embark upon a process of re-examination of the selection process initiated and under taken. The role of the writ Court is board and supervisory and the power must be exercised only in cases where there has been blatant and perverse exercise of the jurisdiction reducing the selection process to a farce or mockery. In the present case, it must be particularly kept in mind that the selection was under taken by the Public Service Commission, a constitutional body, and the Court will certainly not sit in judgment over the decisions of the Commission taken at various stages of the selection process, if such decisions are, otherwise, within the power and jurisdiction of the Commission and the same have been taken in a just and fair manner.

6. It is in the above backdrop that the Court must proceed to analyze the contentions advanced on behalf of the rival parties.

Under the Combined Competitive Examination Rules, 2001, the Public Service Commission is required to call for the interview, candidates between 2 to 3 times the number of vacancies available. In the present case, the Commission, in the affidavit filed, has stated that a decision was taken to call candidates in the ratio of 2.5:1 and accordingly, for the 100 vacancies, 250 candidates were called. If that be so, it is difficult to visualize as to how the discretion vested in the Commission can be understood to have been improperly exercised. No qualifying mark was prescribed for being eligible to be called for interview. The fact that the last of the candidates called for the interview had secured 40.8% marks in absolutely co-incidental.

7. The grievances raised by the petitioners with regard to the answer scripts written by them has been basically three –fold. Low marks have been awarded to the writ petitioners which they contend, is an arbitrary exercise. Anomalies in the answer scripts, by way of double marking is the second grievance on the issue whereas the third grievance is that the answer scripts have been changed/ altered, meaning thereby that the marks secured by one candidate have been assigned to another.

8. To ensure that the petitioners do not continue to entertain any grievance on the aforesaid score and also satisfy the conscience of the Court, this Court had required the Public Service Commission to place the answer scripts of all the petitioners in all the subjects of the examination taken by them. The answer scripts have been accordingly made available to the Court in a sealed cover and the Court has scrutinized the answer scripts of all the petitioners in two of the compulsory papers i.e., General English and Essay and two Optional papers of the some of the Petitioners i.e., Public Administration and History. No double marking, erasures or any other discrepancies are noticed in the answer scripts examined by the Court. The allegation that the answer scripts have been changed is an allegation that would require a more in-depth examination, which, in the absence of any prima facie materials, the Court does not consider to be a proper exercise to be gone merely on the basis of the allegations made. In so far as the award of low marks is concerned, this Court must put on record that marks awarded by an examiner is so awarded on the perceptions and judgment of the examiner. Such marks awarded must, normally, be allowed to hold the field and the Court must not convert itself to an appellate body to sit in judgment over the decision of the examiner that a candidate deserves to be awarded a particular mark. In the present case, the examiners being independent academicians of high repute, appointed by the Public Service Commission, no basis is disclosed as to why the Court should undertake any exercise to substitute or supplant the views of the examiners.

9. In so far as the allegation or relatives of politicians and officials of the Public Service Commission being selected, this Court must put on record that being related to a person in power or a person connected with the Public Service Commission, person cannot be understood to be disqualification so as to render such a person ineligible for selection. There must be positive material that such a relative has been selected not on his merit but because of his relationship. In

the present case, no such material is forthcoming. Even the names of the candidates and their relations, who are alleged to be in power, have not been mentioned. In so far as the grievance with regard to the printing of question papers is concerned, this Court finds it difficult to visualize as to how the petitioners can have any complaint on this score. It is not the case of the petitioners that there was any leakage of the question paper. How the question papers were printed; in which press these were printed; how many question papers were printed; how many were used are all questions that have no relevance, unless the petitioners pleaded and proved that there was a leakage of question papers, which is not the case in the present proceedings.

10. It is again difficult to visualize and appreciate the contention of the petitioners that English was not made a compulsory subject. A paper on General English and Essay was mandatory for all the candidates and in fact the Court had scrutinized the answer scripts of the petitioners on the aforesaid subjects.

11. For all the aforesaid foregoing this court finds no good ground to cause any interference as prayed for by the writ petitioners. All the Writ petitions, therefore, are dismissed but without any cost.

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