

(58)

Annexure - 16

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09-02-2010 — 09-02-2010.

NO — 163

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH.

WRIT PETITION(C) NO.78 (AP) 2009

Shri Ojing Siram ,
Son of late Takam Siram
resident of village-Mopit
PO/PS-Pangin,
District East Siang,
Arunachal Pradesh.

.....Petitioner.

-Versus-

- 1.The State of Arunachal Pradesh,
represented by the Chief Secretary,
Government of Arunachal Pradesh,
Itanagar.
- 2.The Arunachal Pradesh Public Service Commission,
Itanagar, represented by its Chairman,
- 3.Shri Rima Taipodia,
C/O Arunachal Pradesh Public Service Commission,
Itanagar

.....Respondents.

BEFORE
THE HON'BLE MR. JUSTICE B.D.AGARWAL

For the Petitioner : Mr. P.Taffo, Advocate
Mr. R.C.Tok, Advocate

For the Respondents : Mr. R.H.Nabam, Sr. Govt. Advocate,
Mr. N.Tagia, Advocate,
Mr. K.Ete, Advocate.

Date of hearing and judgment: 24.06.2009

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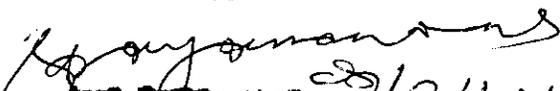
[Signature]
Asst. Registrar,
Gauhati High Court, Itanagar Bench
Itanagar
Authorized by S 78 of Act I of 1972

JUDGEMNT AND ORDER (ORAL)

Arunachal Pradesh Public Service Commission (in brief 'the APPSC') notified certain vacancies vide advertisement dated 25.7.2006 inter alia, to the post of Sub-Treasury Officer. Both the writ petitioner and Respondent No.3 appeared in the Combined Competitive Examination for the said jobs under the reserved quota for physically disabled persons. On the basis of the written examination a separate merit list of physically handicapped candidates was prepared wherein name of Respondent No.3 was shown at serial No.1 and the writ petitioner's name was shown at serial No.8. In the said list, the private Respondent No.3, Shri Rima Taipodia was shown to be Orthopaedically Handicapped person with 50% disabilities, whereas , the writ petitioner, Shri Ojing Siram was also shown to be Orthopaedically Handicapped person with 75% disabilities. The Respondent No.3 was finally selected to the post of Sub-Treasury Officer, on the basis of identity card issued by the Deputy Commissioner certifying that the said person was physically handicapped person. On the other hand, the writ petitioner furnished four documents in support of his disability and the documents included Part-A and Part-B certificates issued by the Deputy Commissioner and medical Board.

2. Being aggrieved with the selection of Respondent No.3 in the reserved quota, one of the unsuccessful candidate i.e. the writ petitioner has challenged Respondent No.3's selection and has filed this writ petition basically to quash and set aside the Notification dated 18.1.2009(Annexure-IV) whereby the Respondent No.3 has been declared selected for the post of Sub-Treasury Officer.

3. I have heard Shri P Taffo, learned counsel for the writ petitioner as well as Shri R H Nabam, learned Senior Government Advocate, for respondent No.1. APPSC (Respondent No.2) was represented by Shri N Tagia, learned counsel, whereas the private Respondent No.3 was represented by Sri K Ete, learned counsel. I have also perused the pleadings, counter pleadings and ^{documents to be a} ~~documents~~ documents submitted by the parties .


Asst. Registrar,
Orissa High Court, Bhubaneswar
Bhubaneswar
Authorized UAG No of Act I of 1972

4. Basically the Act, namely, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has been enacted to give equal opportunities to the physically challenged persons in public employment and also with the objective that such persons may not be discriminated in public employment, if they are otherwise suitable for certain specified posts. As per the mandate of the statute, the APPSC reserved 3% posts for physically disabled persons and there is no dispute to the fact that the aforesaid law has been followed.

5. The only dispute is that the APPSC has selected Respondent No.3 without furnishing requisite certificate by him and also without ascertaining about his physical disability. From the documents filed along with the writ petition and the additional affidavit, it appears to me that APPSC had informed the intending candidates by way of a Notice published in a local newspaper that persons seeking employment, under the reserved category for physically handicapped persons should submit Part-B Certificate of such disability, issued by the competent authority on the basis of Part-A, Medical Certificate issued by the State Medical Board. However, Respondent No.3 furnished only the Identity Card issued by the Deputy Commissioner, West Siang as is revealed from the merit list of handicapped persons. However, according to the learned counsel for the private respondent, along with Identity Card he had also furnished Part-A Certificate as well as Passbook and in this way sufficient evidence of his physical disablement was furnished before the competent authority. Shri K Ete, learned counsel has also submitted that in view of the order dated 1.8.1998 issued by the Chief Secretary to the Government of Arunachal Pradesh, the Deputy Commissioners are competent to issue Identity Card and Disability Certificate on the basis of Part-A Certificate issued by the DMO or CMO to such persons. Shri Ete, learned counsel further submitted that the Identity Card is virtually one and the same and is at par with the Part-B Certificate and as such, there was no infirmity with the selection of the Respondent No.3 to the post of Sub-Treasury Officer.

6. Admittedly, Part-B Certificate was not furnished by the Respondent No.3 before APPSC. At the same time, Part-A Certificate of Respondent No.3,

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[Signature]
29/2/2010
Asst. Registrar (Adm)
High Court, Manager Bench
Naharlung
Authorized UAG No of Act I of 1872

which has been annexed with its affidavit , the District Medical Board did not include any Orthopaedic Specialist.

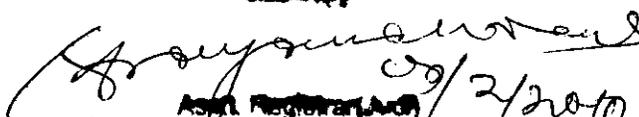
7. The Ministry of Personnel, Public Grievances and Pensions, Government of India, has issued an Office Memorandum dated 29.12.2005 giving certain guidelines in the matter of reservation for the persons with disabilities. Under clause 10 of this Office Memorandum, it has been advised that Disability Certificate shall be issued by a Medical Board consisting of at least three members, out of which, at least one should be a Specialist in the particular field. However, as noted earlier, Part-A Certificate issued by the District Medical Board, which formed the basis of issuing the Identity Card by the Deputy Commissioner and eventually accepted by APPSC, did not have any Orthopaedic Surgeon or Specialist, as its member, to assess the orthopaedic disability of Respondent No.3. Hence, it appears to me that Respondent No.3 has been selected in the reserved quota without strict adherence to the guidelines in this regard.

8. Situated thus, it would be just and proper to direct Respondent No.3 to appear before the State Medical Board of Arunachal Pradesh within a period of 4(four) weeks from today and on such appearance, the said Medical Board would include one Orthopaedic Surgeon/Specialist to certify whether Respondent No.3, namely, Shri Rima Taipodia, is a physically disabled person or not, as defined under Section 2(o) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is further made clear that the State Medical Board shall send its report/certificate directly to the APPSC and on receipt of such report/certificate, the APPSC shall reconsider the candidature of the Respondent No.3 for his selection, to the post of Sub-Treasury Officer, under the reserved quota.

9. With the aforesaid directions, the writ petition stands disposed of.

SDF. B.D. AGARWAL
JUDGE

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Verified to be a
true copy

Asst. Registrar (Judicial)
Gauhati High Court, Dispur Bench
Assam
Authorised (S 70 of Act 1 of 1)