

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

ITANAGAR PERMANENT BENCH

1. WP(C) NO. 164 (AP) OF 2011

Sri Toko Soni,
S/o Toko Rikam,
Resident of village Popu-II,
P.O. & P.S. – Naharlagun
District – Papum Pare,
Arunachal Pradesh.

.....Petitioner

- Versus -

1. The State of Arunachal Pradesh represented by the **Secretary, Department of Power,** Government of Arunachal Pradesh, Itanagar.
2. The Arunachal Pradesh Public Service Commission, (APPSC), represented by the Secretary, Itanagar, Arunachal Pradesh.
3. The **Joint Secretary, Arunachal Pradesh Public Service Commission,** Itanagar, Arunachal Pradesh.

.....Respondents

Advocates for the petitioner :-

Mr. K.N. Choudhury, Sr. Advocate.
Mr. G. Tarak

Advocates for the respondents:-

Mr. R. H. Nabam, Sr. Government Advocate
Mr. N.Tagia, standing counsel (APPSC)

2. WP(C) NO. 261 (AP) OF 2011

Miss Pinky Lego
D/o Shri Orin Lego,
R/o Rani village,
P.O. - Sille Oyan, P.S. – Ruksin,
District – East Siang,
Arunachal Pradesh.

.....Petitioner

- Versus -

1. The State of Arunachal Pradesh represented by the **Secretary, Department of Power,** Government of Arunachal Pradesh, Itanagar.
2. The **Arunachal Pradesh Public Service Commission, (APPSC),** represented by the Secretary, Itanagar, Arunachal Pradesh.
3. The **Joint Secretary, Arunachal Pradesh Public Service Commission,** Itanagar, Arunachal Pradesh.

.....Respondents

vs (R) 24/4/12

SORA

24.4.12
vs (R)

Kalita

25/4/12
SORA

posts, the APPSC, instead of recommending the names of all the successful candidates, which includes both these writ petitioners, has recommended the name of only 1(one) candidate, whose Roll No. is indicated at Serial No. 4, of the said Result Notification. It is the submissions of both the learned counsels appearing for the writ petitioners in both these writ petitions that since the Arunachal Pradesh Public Service Commission(APPSC) who conducted the selection process in pursuant to the Advertisement dated 04.05.2010 for the notified 3(three) posts, has to recommend the names of all the successful candidates as notified and published by them in the said Result Notification and thereafter, it is the duty of the State Respondents to consider as to who is to be appointed or not. The respondent APPSC cannot withhold the names of any of the successful candidates. The action of the Arunachal Pradesh Public Service Commission(APPSC) in recommending only the name of 1(one) candidate for the said notified 3(three) posts, is, therefore, highly illegal and arbitrary. The requisition of the State Respondents is for 3(three) posts and as such, all the successful candidates notified by the APPSC, is to be recommended and forwarded by the APPSC to the State Respondent for further appointment to the said posts as per the Advertisement dated 04.05.2010. Both these writ petitions have been filed challenging the illegal and arbitrary actions of the Arunachal Pradesh Public Service Commission(APPSC) and for a direction to the Respondents No. 2 and 3 i.e. APPSC to recommend all the names of the successful candidates, whose Roll Nos. have been duly notified by them in the Result Notification, so as to enable the State Respondent to make the appointment for the said notified 3(three) posts, for which the Advertisement dated 04.05.2010 was notified as per the requisition made by the State Respondent and for which the Advertisement was issued/published by the APPSC. Mr. K. N. Choudhury, learned Senior counsel appearing on behalf of the writ petitioner in WP(c) No. 164(AP)2011, has referred and relied upon 2(two) decided cases of this Court in WP(c) No. 3794/2005 decided on 14.12.2010 and WP(c) No. 179(AP)2007 decided on 03.04.2008.

5. Before dealing with WP(c) No. 164(AP)2011 and WP(c) No. 261(AP)2011, the back ground of filing Writ Petition No. 127(AP)2011 has to also be placed on record. The said WP(c) No. 127(AP)2011 was filed by Miss Pinky Lego, the present writ petitioner in WP(c) No. 261(AP)2011, prior to filing of WP(c) No. 261 (AP) 2011. Pursuant to the said Advertisement dated 04.05.2010, the said writ petitioner also appeared for the written test held on 11.09.2010 and 12.09.2010 along with other candidates and was also declared successful and qualified. However, in the call letter for appearing for the *viva voce*, the Commission directed the said writ petitioner to produce the original Degree Certificate. Since the original Degree Certificate so called, were to be awarded by the University at the Convocation to be held only after the date of the *viva voce*, the petitioner approached this Court in WP(c) No. 127 (AP) 2011 with a prayer to direct the Arunachal Pradesh Public Service Commission (APPSC) i.e. Respondents No. 2 and 3 to allow the writ petitioner to appear for the *viva voce*. This Court after hearing the parties and in the peculiar circumstances of the matter, vide order dated 04.04.2011, directed the respondents to allow the petitioner Miss Pinky Lego, to sit in the personality test/*viva voce* to be held on 07.04.2011 and the result of the petitioner, be kept in sealed cover and to be opened only when the petitioner produces the Original Certificate. Pursuant to the said order, the writ petitioner was allowed to appear for the *viva voce*/ personality test and her result was kept under sealed cover. That, thereafter, the petitioner produced the said Original Certificate before the respondent Commission and vide order dated 14.06.2011, the respondents i.e. APPSC was directed to open the sealed cover and declare the result of the petitioner. In this view of the matter, the interim order dated 04.04.2011 was also vacated. That, thereafter, the results were declared and the WP(c) No. 127(AP)2011 was allowed to be withdrawn by an order dated 19.07.2011. That, thereafter, the said petitioner along with other candidates were declared successful and her Roll No. along with other successful candidates were notified. Being aggrieved by the action of the respondents No. 2 and 3, in not recommending the name of the writ petitioner to the State Government for appointment to the said advertised posts and recommending only the name of 1(one) candidate, the present WP(c) No. 261(AP)2011 has been filed by her on the same grounds and relief as that of

WP(c) No. 164(AP)2011 filed by petitioner Sri Toko Soni. In WP(c) No. 261(AP)2011, on 15.11.2011, Mr. Nani Tagia, learned standing counsel appearing for the respondent APPSC, raised the question of maintainability of WP(c) No. 261(AP)2011 on the grounds that the petitioner had earlier filed WP(c) No. 127(AP)2011 which was withdrawn on 19.07.2011 and as such, the APPSC will not be filing any counter affidavit but will rely on the affidavit filed by the Commission in WP(c) No. 127(AP)2011, and the same may be placed before the Court for disposal of the present writ petition. Considering the submissions of the learned standing counsel, the records of WP(c) No. 127(AP)2011 were called for. On 07.12.2011 on the prayer of Mr. Nani Tagia, learned standing counsel for APPSC, 3(three) weeks time was granted to him to file objection petition with regard to maintainability of the said writ petition. On 11.01.2012, the learned standing counsel of the APPSC further submitted that the counter affidavit filed by the APPSC in WP(c) No. 127(AP)2011 may be taken into consideration for the purpose of objection petition, which will be relied upon by him in the present case i.e. WP(c) No. 261(AP)2011. Therefore, the question of maintainability of WP(c) No. 261(AP)2011, in the light of the counter affidavit filed by the APPSC in WP(c) No. 127(AP)2011, has been minutely perused and it is revealed and also on records, that in the whole counter affidavit of the APPSC filed in the said WP(c) No. 127(AP)2011, there is not even a whisper of any plea on the question of maintainability raised by the Arunachal Pradesh Public Service Commission (APPSC) in the said affidavit-in-opposition and therefore, the grounds of maintainability of WP(c) No. 261(AP)2011, raised by the Arunachal Pradesh Public Service Commission(APPSC), has not been taken into consideration.

6. It is an admitted fact and on record that both the writ petitioners in the present writ petitions, appeared in the said Selection process conducted by the respondent Arunachal Pradesh Public Service Commission(APPSC) pursuant to Advertisement dated 04.05.2010 and both were declared successful. That, thereafter, both the writ petitioners appeared in the *viva voce* test. However, the Arunachal Pradesh Public Service Commission(APPSC) did not prepare the select list of the successful candidates and recommended the name of only 1(one) candidate for appointment, although 3(three) posts were

03.04.2008, wherein this Court has held that it is the primary duty of the Public Service Commission(PSC) to communicate to the Government the entire list of the qualified candidates and not to withhold any name of the candidates who have qualified in the examination. It is for the Government to consider or not to consider the recommendation of the Public Service Commission(PSC). This case has been referred to by Mr. K. N. Choudhury, learned senior counsel, appearing for the writ petitioner in WP(c) No. 164(AP)2011.

7. In the facts and circumstances of the present writ petitions, and on the face of the records and in the light of the decisions of the Apex Court and cited case of this Court, as referred above, it is abundantly clear that the respondent Arunachal Pradesh Public Service Commission(APPSC) i.e. Respondents No. 2 and 3, have misconceived and misconstrued the letter dated 23.03.2010 while recommending the name of only 1(one) successful candidate and withheld the name of other successful candidates against the clear vacancies of 3(three) posts, leaving no option for this Court, except to direct the Respondents No. 2 and 3(APPSC) to recommend and forward all the names of the successful candidates so as to enable the State Respondent to consider as to who is to be appointed or not to be appointed, the direction for appointment of which, lie entirely on the domain and prerogative of the State Government and not the respondent Arunachal Pradesh Public Service Commission(APPSC).

8. The Respondents No. 2 and 3 are hereby directed to recommend the names of all the successful candidates to the Government who have otherwise been declared successful within a period of 30(thirty) days from the date of receipt of a certified copy of this order to enable the State Respondent to further make the appointment.

9. With the above directions, both these writ petitions viz. WP(c) No. 164(AP)2011 and WP(c) No. 261(AP)2011 are hereby allowed and they shall accordingly stand disposed of. There shall, however, be no order as to costs.


JUDGE