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

WRIT PETITION(C) 213 (AP) 2007

Rajesh Dawe,
C/o Pradip Lingfa, Lecturer,
(Mech. Engg. Department),
NERIST, Nirjuli, Papum Pare District,
Nirjuli.

.....Petitioner.

-Versus-

1. Arunachal Pradesh Public Service Commission
through its Secretary, Itanagar,
District: Papum Pare,
Arunachal Pradesh,
2. The State of Arunachal Pradesh through the
Secretary, Department of Power,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
3. Alen Yirang,
C/o. Dr. M. Modi,
D-27, Type-IV, Naharlagun.
4. Tamo Boa,
C/o Bar Rupa, PWD Division-A,
Itanagar, Post Box No.248,
District: Papum Pare - 791 111
5. Hibu Bama,
C/o Takhe Muyang,
Directorate of Economics & Statistics,
Government of Arunachal Pradesh,
Itanagar.
6. Miding Pertin,
C/o Executive Engineer (M),
PHE/Mech/Elect.
Division, Near Div-IV, Senki Park,
Itanagar.
STCT Building R. No.02

*Same as
SL 79 to 61 c*

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**Arunachal Pradesh
Public Service Commission**
Receipt No. *168*
Date *28.04.08*

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case. However, it may also be noted that by order dated 23.8.2006, notice was issued and vide order dated 21.3.2007 passed in Lawazima proceedings it was recorded that the A/D card in respect of Respondent No.7 has been received back after due service and it was further ordered that the service of notice upon Respondent Nos. 3 to 6 be accepted as sufficient in view of Order V Rule 9(5) of C.P.C. By order dated 26.11.2007, it was ordered that rule be issued and the matter be fixed for hearing. The action challenged in this application can otherwise be scrutinized as may be further explained by the official respondents and for that purpose, respective response has been filed on behalf of the Respondent No.1 as well as Respondent No.2.

2. For the purpose of considering the application, it may also be considered necessary to first make reference to certain facts as disclosed from the pleadings exchanged. By advertisement dated 15.10.2005 issued by Respondent No.1, the applications were invited for filling up of 06 (six) posts of Assistant Engineer (Electrical) with further information to the extent that the ratio of distribution of posts as per Stream wise shall be 03 (three) posts against Electrical stream, 02(two) posts against Mechanical stream and 01 (one) post against Electronic/Telecommunication/Computer Engineering. In the said advertisement specific mention has also been made to the subject papers as regard the category under Mechanical Engineering stream and also the category under Electronic/ Telecommunication/ Computer Engineering. The said advertisement dated

4. During the course of hearing, Mr. P.K.Tiwari, learned counsel for the petitioner has made a reference to the specific provision of the Arunachal Pradesh Power Engineering Service Rules, 1993, hereinafter referred to as "the Rules" and in particular Rules 6, 11 and 12 and Schedule I of the Rules and has contended that it is clearly contemplated under the Rules that there is Branch/Stream wise posts in the recruitment and such position had been correctly reflected in the advertisement dated 15.10.2005. Making reference to the factual position, as evident from the mark-sheets issued by the Commission, the learned counsel points out that the writ petitioner had been placed at serial No.2 in order of merit amongst the candidates belonging to the Mechanical Engineering Stream as per Selection Test conducted in terms of advertisement dated 15.10.2005. He also submits that in view of the clear statutory provision and also the representation of the authorities made to the extent that the 02(two) vacant posts be filled-up under Mechanical Engineering Stream as notified vide advertisement dated 15.10.2005, the respondents could not have altered their position and Respondent No.1 had also acted illegally in not making recommendation against the second post under the Mechanical Engineering Stream. He also contends that the advertisement dated 15.10.2005 is in conformity with the Rules and as such the action of the Respondent No.1 in not making the recommendation against the second post under Mechanical Stream is not only contrary to the Rules and but also contrary to the Public Advertisement dated 15.10.2005. The counsel therefore submits that on due consideration of the different aspects of the

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decision of a Division Bench of this Court rendered in the Case of *Mukul Saikia & Ors. Vs. State of Assam & Ors, as reported in 2007(1) GLT 96.*

6. Mrs. M. Libang, learned Govt. Advocate, referring to what is already stated in the affidavit of the Respondent No.2, submits that on the basis of the recommendation made by the Commission, the 06(six) candidates so recommended by the Commission have since been appointed to the post of Assistant Engineer (Electrical).

7. On perusal of the pleadings so exchanged and also upon hearing the learned counsel for the parties, it is seen that it is not disputed that the recruitment to the posts of Assistant Engineer (Electrical) is governed by the Rules as referred to above. As may be understood from the response of the Commission that advertisement dated 15.10.2005 was issued on further consideration of the information sent to the Commission by the State Government vide letter dated 01.10.2005. Except what is mentioned in letter dated 31.5.2005 as to convey that there is no Branch/Stream wise post, no explanation is even made in the response of Respondent No.2 that letter dated 01.10.2005 was wrongly issued and that the advertisement dated 15.10.2005 was wrongly made. In fact, no steps had been taken for issuing any corrigendum to the advertisement dated 15.10.2005. Except the contention made that there is no Branch/Stream wise posts of Assistant Engineer (Electrical), no further contentions have also been made by the Respondent No.1 or Respondent No.2 that advertisement dated 15.10.2005



(Electrical) in terms of the Rules, it is not considered necessary to make further enquiry for the purpose of considering this application. It is not disputed that the qualification so prescribed for the recruitment to the posts of Assistant Engineer (Electrical) is also from Mechanical Engineering Stream. Even without requiring to test the action of the respondent authorities by strict construction of the Rules, as sought to be projected by the learned counsel for the petitioner, it is certainly permissible for the State Government to specify the particular number of posts of Assistant Engineer (Electrical) that may be required to be filled-up from the different Engineering Streams in accordance with the Rules as specified in advertisement dated 15.10.2005. It is not the case of the respondents that the said advertisement dated 15.10.2005 is otherwise contrary to the provision of the Rules. The said advertisement dated 15.10.2005 is shown to be in continuation of earlier advertisement dated 25.8.2005 and the distribution of posts so mentioned in the advertisement dated 15.10.2005 came to be made on the basis of specific communication dated 01.10.2005. The said advertisement dated 15.10.2005 must in any case be understood as making a clear representation to the intending candidates. Therefore, unless the advertisement dated 15.10.2005 is shown to be contrary to the Rules, a view may be taken that subsequent communication dated 31.5.2006 cannot provide a legal basis for overlooking what has been already specified in the advertisement dated 15.10.2005 as regard the distribution of posts sought to be filled up stream wise. A further view may also be taken that the very argument that there are no

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discussed, the action of the Commission in not making recommendation in terms of advertisement dated 15.10.2005 is liable to be interfered with and consequently to order that the recommendation so made by the notification dated 19.7.2006 with respect to the second post of Assistant Engineer (Electrical) as to be filled up by a candidate from the Stream other than the Mechanical Stream is liable to be ordered to be quashed.

Consequently having regard to the standing of the petitioner and the legal duty that is cast on Respondent No.1 in the present case, it is also tenable to take a view that a writ of mandamus is liable to be issued to the respondent No.1 to take such further steps as making further recommendation in terms of advertisement dated 15.10.2005.

10. In the response of Respondent No.2, it is stated that all the 06(six) candidates so recommended by the Commission vide notification dated 19.7.2006 have been appointed to the post of Assistant Engineer (Electrical). In this view of the matter, as also submitted by the learned Standing Counsel for the Commission as to the legal position of requiring the Commission to only make recommendation for the vacancies so advertised, further discussion may also be made. For the reasons already stated above, notification dated 19.7.2006 is liable to be interfered with to the extent that the recommendation so made in favour of the candidate for the second post of Assistant Engineer (Electrical), required to be filled up from the Mechanical Stream as per advertisement dated 15.10.2005, is liable to be

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**GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF POWER
ITANAGAR.**

No. PWRS/ E-93/95-96/Vol.III / 47258

Dated Itanagar the 11 th June'2008.

To

✓ The Secretary,
Public Service Commission,
Govt. of Arunachal Pradesh
Itanagar.

Sub :- Withdrawal of one Post of Assistant Engineer(Elect.)

Ref:-

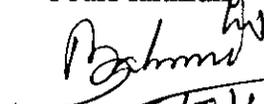
- P.72
1. Your letter No. PSC-R/11/2006 dated 24-04-2008 and No. PSC-R/24/2007 dated 03-06-2008
 2. Our letter No. PWRS/E-93/95-96/ Vol.III/4444 dated 17-04-2008.

Sir,

This department, in view of reasons indicated in our letter, hereby withdraws 1(one) post of Assistant Engineer (Elect.) against Direct Recruitment quota.

You are requested to complete the formalities as stipulated in para 11 of the order of the High Court dated 12-03-2008. There is no likelihood of increase in the number of vacancies, as on today.

Yours faithfully

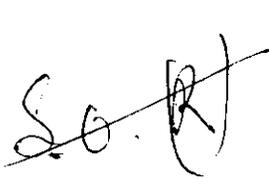

12/6/08
(K.P. BALACHANDRAN)
Under Secretary (Power)
Govt. of Arunachal Pradesh
Itanagar.

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recalled and for that purpose, no further specific order is required to be issued in this regard at this stage.

11. For the reasons discussed above, the application deserves to be allowed. Accordingly, it is ordered that the part of the recommendation made by the Commission with respect to the second post of Assistant Engineer, notified to be filled up from the Mechanical Stream as per advertisement dated 15.10.2005, vide notification dated 19.7.2006 shall stand set aside and quashed. It is further ordered that a writ of mandamus be issued as directing Respondent No.1 to take such further steps of making a recommendation against the ^{second} post of Assistant Engineer (Electrical) from the Mechanical Stream in terms of advertisement dated 15.10.2005 and to direct further that such process be completed within a reasonable time, preferably within 3 months time from the date of the receipt of this order. Respondent No.2 shall also take such further steps of making consequential orders within a reasonable time.

12. Accordingly, the application is allowed. However, there shall be no order as to costs.

Memo No. WP(C)213(AP)07

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JUDGE

Dtd Naharlagun, the 09.04.08
copy forwarded for ^{sc} information and necessary action.

1. The Secretary, APPSC, Itanagar.
2. The The Secretary, Deptt. of Power, Govt. of AP Itanagar.
3. The GA of AP Naharlagun,
4. Mr. N. Tagia, L/S.C. APPSC.
5. O/C.


 08/04/08
 Deputy Registrar
 Gauhati High Court
 Itanagar Permanent Bench
 Naharlagun.