



THE GAUHATI HIGH COURT AT ITANAGAR

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

ITANAGAR BENCH

Page No. 1

Sl. No. - 1626

CASE NO : WP(C) 61/2011

District : Papum Pare

Category : 10189 (Other Civil Rules.)

1 MISS BYABANG NAEMEH
RESIDENT OF F & G SECTOR, ITANAGAR, AP

Petitioner/appellant/applicant

Versus

1 ARUNACHAL PRADESH PUBLIC SERVICE
COMMISSION
ITANAGAR, ARUNACHAL PRADESH
2 2. THE STATE OF AP
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF
AP ITANAGAR.

Respondent/Opp. Party

Advocates for Petitioner/appellant

- 1 Mr Tony Pertin
- 2 Mr G Tarak
- 3 Mr A K Singh
- 4 Mr A Bhattacharjee

Advocates for Respondents

- 1 Mr N Tagia
- 2 S/C APPSC
- 3 GA

Summary Of Case And Prayer In Brief

CERTIFIED COPY OF JUDGEMENT / ORDER

| DATE OF FILING APPLICATION | DATE WHEN COPY WAS READY | DATE OF DELIVERY |
|----------------------------|--------------------------|------------------|
| 08/09/2011 | 08/09/2011 | 08/09/2011 |

BEFORE

THE HON'BLE MR JUSTICE K. MERUNO

DATE OF ORDER : 08/09/2011 ✓

JUDGMENT & ORDER (CAV)

Heard Mr. Tony Pertin, learned counsel for the petitioner, Mr. N. Tagia, learned Standing Counsel for the Respondent No.1/APPSC and Mr. R. H. Nabam, learned Sr. Govt. Advocate appearing for Respondent No.2.

2. Mr. Pertin, learned counsel for the petitioner submits that the petitioner, being eligible, participated in the Arunachal Pradesh Public Service Combined Competitive Examination'2010 with Psychology as the optional paper under Roll No.102185, Code No.V2-05. The aforesaid

certified to be a true copy

[Signature]
Asst. Registrar
Gauhati High Court, Itanagar Bench

recruitment process ended with the declaration of result on 02-12-2010, wherein, the name of the petitioner did not appear in the select list.

3. After obtaining information through RTI and by going through the evaluation sheets [Annexure-P/2 & P/3], it is clear that one of the evaluator has given 6(six) marks out of allotted 10(ten) marks against question No. 4(c). However, the other evaluator has not at all given any marks against the question No.4(c) and left it unmarked. In other words, the second evaluator has not evaluated the question No.4(c) or omitted to award any marks against the question No.4(c), which could be some human error although she has attempted the question No.4(c). Even if the answer given by the candidate is not correct, it is expected that some marking, be it zero, is required to be awarded.

4. The petitioner is not seeking for re-evaluation of her whole answer script. What the petitioner is seeking is that the other evaluator is duty bound to award some marks, be it zero, against question No. 4(c) and the omission to award any mark has probably resulted in deprivation. The petitioner had secured in total 889 marks. The person at the select list at Sl. No. 44 [out of 51 recommended candidates] has secured 889.75 marks. Had some marks had been awarded against question No.4(c), the total secured marks of the petitioner could have been more. In such an event, the petitioner could have secured a higher grade, particularly, in regard to the relative ranking etc. of the candidates and would have been selected and recommended for appointment.

5. The petitioner is entitled for a direction to the respondent No.1/APPSC to award mark, be it zero, and thereafter to indicate the relative merit position of the petitioner and to further direct the State authorities, in the event of favourable recommendation, to accommodate the petitioner against the post which the petitioner would have been selected. In the present case, the State authorities are also duty bound to do full justice and if need be, may create a super-annuity post to accommodate the petitioner by offering appointment to a suitable post. It is not the case of the State authorities that there are no vacant posts. It is understood that the State authorities have already requisitioned for conducting recruitment process just after the declaration/notification of the result. In the aforesaid submissions, Mr. Tony Pertin, learned counsel for the petitioner has relied upon a decision of the Apex Court reported in (2008) 2 SCC 750 [Union of

889
889.75

verified to be a true copy

Authenticated by No. 26 of Advt of 15.7.72

Asstt Registrar (Advt)
Genl. Hqrs. Court, Bangalore Bench
K. Narayana

India & another vs. Narendra Singh] and in particular to Para-32 of the said judgment.

6. An affidavit-in-opposition has been filed by the Respondent No.1/APPSC. The stand taken by the Respondent No.1/APPSC is contained in Paragraphs-5, 6, 8, 10, 12 & 13 of the affidavit-in-opposition, wherein, in paragraph 6 of the said affidavit-in-opposition, the deponent has stated about the steps taken by the Commission in this regards and that as per the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2010 and upon verification, "1(one) of the 2(two)" evaluators had admitted that some human error has occurred on his part while awarding the marks of question No.4(c) of Phychology Paper-II of the petitioner and the same human error has also been admitted in Paragraph-8 of the affidavit-in-opposition. Further in paragraphs 10, 12 & 13 of the said affidavit-in-opposition, the Commission states that in the absence of any guidelines and any provision in the Arunachal Pradesh Public Service Combine Competitive Examination Rules, 2001 and also as provided under the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2010, where it is clearly mentioned that after declaration of final result, no rectification/modification or re-evaluation can be considered under any circumstances. The Commission cannot initiate for re-evaluation/re-check through another evaluator, at this stage, since no guideline or rule permits this and it has not been done before.

7. The APPSC had taken a stand that since the final result has already been notified and there is no guideline or standing system followed by the Commission to review the result or re-evaluate the answer script and therefore, it was conveyed that the case of the petitioner cannot be reviewed (Annexure-p/6).

8. Mr. Nabam, learned Sr. Govt. Advocate appearing for Respondent No.2/the State of Arunachal Pradesh submits that since the matter in this writ petition pertains strictly between the petitioner and the respóndent No.1/APPSC and the rules and guidelines framed under the APPSC, the State has nothing to say except that if no such rules or guidelines have been provided by the Commission to tackle such eventualities, it is high time that the Respondent No.1/APPSC frame some rules and guidelines in order to meet such future eventualities amongst others and leaves it to the wisdom of this Court to pass such necessary orders, which may deem fit

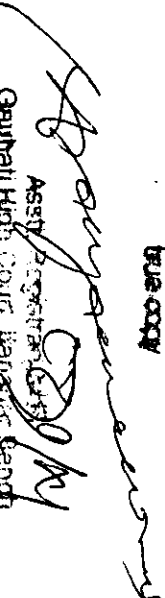
✓
Verified to be a
true copy

and appropriate to the situation.

9. After hearing the learned counsel appearing for the respective parties and after giving my thoughtful anxious consideration of the whole aspects of the matter in its total perspective, admittedly, it is a case of human error and because of the human error, can a person be deprived of his legitimate rights and expectation to be washed away because of the admitted human error and the prescribed remedy has not been provided under the rules or guidelines in vogue and applicable with the APPSC for the time being in force. It is very unfortunate, in this particular case, that the admitted human error committed by the evaluator appointed by the Respondent No.1/APPSC has resulted in far reaching consequences pertaining to a person, who was otherwise, eligible on all counts to be deprived of his/her future career prospect because of the admitted human error for no fault of the petitioner in any manner in whatsoever. The stand taken by the APPSC in the facts and circumstances of the case is not justified in any manner or can be accepted under any legal circumstances. This particular case is one of the first of its cases where the APPSC has not provided any remedy to tackle such eventualities and the APPSC cannot be allowed to wash its hands on the ground that there is no provision under the rules or guidelines to meet such cases. This is not the first case and in future also such cases are certainly to come up and since no remedy has been provided under the rules or guidelines with the Commission, the APPSC cannot take any action in such a case today or in the future. It is universally said and accepted to "err is human" and therefore, such human errors are bound to take place in the near future. Therefore, the APPSC must make provision to meet such cases of human error in the future by making amendment of the rules and guidelines.

10. The question before this Court, in such a peculiar case, can the Court sit mute and allow a grave injustice to be committed or allowed to stand and not take any corrective action/measure so as to deliver the justice and also to meet the ends of justice. Relying on the views of Lordships in the reported case of the Apex Court cited by Mr. P.ertin, referred above, wherein, it has been held that, "mistakes are mistakes and they can always be corrected by following due process of law". Similarly, in the present case, the admitted human error is also mistake and which mistake can always be corrected by following due process of law. The Respondent No.1/APPSC can always correct the mistake of human error committed by the duly appointed evaluator by amending the rules and

verified to be a true copy


 Asst. Registrar
 Gauhati High Court, Kamakhya Road
 Nishalbagh
 Assam
 Authorised Signatory of Asst. Registrar

26^c

guidelines to meet such eventualities or situation in the near future.

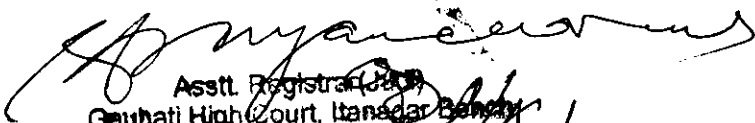
11. In the present case, what has been noticed that while perusing the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2010, such a provision has been provided under Clause-37 Sub-clause (iii) (a) and therefore, this writ petition is being disposed of with a direction to the Respondent

No.1/APPSC to appoint another fresh/new evaluator to reassess/recheck against the question No.4(c) of the subject Psychology Paper-II of the petitioner and after the said fresh evaluation, if the petitioner stood qualified, shall recommend the case of the petitioner. The whole process of appointing new/fresh evaluator and completing the evaluation and thereafter recommend the case of the petitioner, if found qualified, shall be completed within a period of 30 days from the date of receipt of a copy of this judgment and order.

12. With the above direction, this writ petition stands allowed and disposed of to the extent as indicated above. In the facts and circumstances of the case, no order as to cost is passed.

Sd/- K. MERUNTO.
JUDGE

certified to be a
true copy


Asstt. Registrar (J&A)
Gauhati High Court, Itanagar Bazar
Nahariaganj
Authorised U/S 76 of Act I of 1872