

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH

WP(C) No. 264 (AP) 2018

1. SRI TABA TEKA,
S/o, Late Taba Sotum,
Village – Emchi-III, P.O./P.S. – Doimuk,
District – Papum Pare, Arunachal Pradesh.

2. SRI NABAM ROVI,
S/o. Shri Nabam Laning,
Village – Gangtung, Circle – Parang,
P.O./P.S. – Sagalee,
District – Papum Pare, Arunachal Pradesh,
Presently residing at D - Sector, Nirjuli,
P.O./P.S. – Nirjuli, District – Papum Pare,
Arunachal Pradesh.

3. SRI TONI JEARNG,
S/o – shri Takek Jerang,
Village – Yagrung, P.O./P.S. – Pasihat,
District – East Siang, Arunachal Pradesh,
Presently residing at D - Sector, Nirjuli,
P.O./P.S. – Nirjuli, District – Papum Pare,
Arunachal Pradesh.

.....Petitioners

- VERSUS -

1. State of Arunachal Pradesh,
Represented through the Chief Secretary,
Government of Arunachal Pradesh, Itanagar.

2. The Commissioner/Secretary,
Department of Animal Husbandry & Veterinary,
Government of Arunachal Pradesh, Itanagar.

3. The Director,
Animal Husbandry & Veterinary,
Government of Arunachal Pradesh, Itanagar.

.....Respondents

Advocates for the Petitioners : Mr. T. Tapak,
Mr. T. Taki,
Mr. D. Tali,
Mr. T. Pongkeng,
Mr. Y. Pangu, Advocates

Advocate for the Respondents : Mr. S. Tapin,
Senior Government Advocate,
Arunachal Pradesh,
For Respondents Nos. 1 to 3

:::BEFORE:::
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Date of hearing and Order : **06-06-2018**

JUDGMENT AND ORDER (Oral)

Heard Mr. Tabit Tapak, learned counsel for the petitioners and Mr. Subu Tapin, learned Senior Govt. Advocate appearing for the State Respondents No. 1, 2 & 3.

2. It is stated by the petitioners that the Director of Animal Husbandry & Veterinary, Govt. of Arunachal Pradesh on 06.12.2016 issued an advertisement on 06.12.2016 for few posts of "Stockman" (Male Candidates) in the said department. In the said advertisement it was provide that appointment to the said post of "Stockman" will be made after selecting candidates through competitive examination of 100 marks each in the subjects of (i) Elementary Mathematics, (ii) General Knowledge and (iii) General English & Essay followed by (iv) Viva-Voce test of 50 marks, in total of 350 marks.

3. The petitioner being eligible applied for the said post and on being called appeared in the said selection test held on 19.02.2017. After they qualified in the written test they were called for the viva-voce and on their appearance, the Selection Board, duly constituted on 08.04.2017 by the State respondents in the Animal Husbandry & Veterinary Department, it its Minutes dated 25.04.2017,

prepared a list recommending 18 (eighteen) numbers of candidates for appointment to the posts of "Stock Man" after observing all codal formalities.

4. It is also stated by the petitioners that the concerned Selection Board in its said Minutes dated on 25.04.2017, also prepared the list of 52 (fifty two) candidates as wait list candidates, wherein, their names figured at Sl. No. 29, 30 and 35. By placing a copy of the order No. AHV/E-285/2016 dated 28.04.2017 issued by the Director of Animal Husbandry & Veterinary, Government of Arunachal Pradesh, the petitioners stated that the said Director by the said order dated 28.04.2017 appointed one Ajay Tayeng, whose name figured at Sl. No. 25 in the said wait list candidates and appointed him as a 'Stock Man' by posting him under the establishment of Director of Animal Husbandry & Veterinary Officer, Yingkiong against a vacant post.

5. The petitioners findings that there are numbers of vacant posts of Stock Man in the said department and as their colleagues, whose names figure in the wait list candidates have been appointed, where their cases have not been considered, therefore, they filed a representation on 30.10.2017 before the Director of Animal Husbandry & Veterinary Department of the State for consideration of their appointment in the posts of Stock Man under the said department on being selected for the said post in the written examination and viva-voce test, followed by their remainder dated 17.01.2018.

6. Since the said representation and remainder of the petitioners dated 30.10.2017 and 17.01.2018 have not been considered till date, therefore, the petitioners, in this writ petition have prayed for a direction to the respondents in the Animal Husbandry & Veterinary Department of the State, more particularly the Director of the said department, the respondent No. 3 for appropriate consideration of their said representations in terms of established Rules in force.

7. Perused the advertisement dated 16.12.2016 for the posts of 'Stockman' (Male Candidates) issued by the Director in the Department of Animal Husbandry & Veterinary Department of the State annexed to the writ petition as Annexure-I .

8. Also perused the Minutes of the Selection Board dated 25.04.2017 selecting the candidates for the said post of 'Stock Man' annexed to the writ petition as Annexure-II.

9. From the said Annexure-I, the advertisement dated 06.12.2016 for the posts of 'Stockman' in the Department of animal Husbandry & Veterinary Department of the State made by its Director, it is seen that the said advertisement was for "few posts" of "Stock Man". But, in the said advertisement the respondents in the Department of Animal Husbandry & Veterinary did not notify the numbers of the posts of 'Stock Man' actually to be filled up by the said advertisement dated 06.12.2016.

10. It is settled legal proposition that with regard to appointment to public post it must be as per the provisions of Article 14 and 16 of the Constitution of India and the same cannot be flagrant violation of the same and appointment of a person in such a manner without advertising the vacancy creates a doubt regarding the sanctity of appointment.

11. The Hon'ble Supreme Court in the case of *Renu -Vs- District & Sessions Judge*, reported in (2014) 14 SCC 50 have held that –

"Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."

12. In the present case the advertisement dated 06.12.2016 was without the number of posts of 'Stock Man' a public post in the Department of Animal Husbandry & Veterinary of the State that was available for selection and recruitment, which is not in accordance with the settled law.

13. Further, from the Annexure-II, Minutes of the Selection Board dated 25.04.2017 selecting the candidates for the said post of 'Stock Man', it is seen

that the concerned Selection Board of Animal Husbandry & Veterinary Department, constituted by the Government of Arunachal Pradesh on 08.04.2017, while recommending 18 numbers of candidates for appointment to the posts of 'Stock Man' in the Animal Husbandry & Veterinary Department, also recommended 52 candidates, wherein the names of the petitioners figure keeping the panel for recruitment to the post of 'Stock man' against future vacancies observing that the validity of the said panel will be for 6 (six) months, which was signed on 25.04.2017 by the (i) Director (Animal Husbandry & Veterinary) of the State as Chairman of the said Selection board whereas (ii) Under Secretary (P&D), (iii) Joint Director (Animal Husbandry & Veterinary Department), (iv) Joint Director (Establishment) and (v) Deputy Director (Fishery) of Government of Arunachal Pradesh as the Members of the said Board.

14. In the case of *Hoshiar Singh -Vs- State of Haryana*, reported in 1993 *Supp (4) SCC 377*, the Hon'ble Apex Court have held as follows –

"The learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned on the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable."

15. A three Judges Bench of the Hon'ble Supreme Court in the case of *Gujarat State Dy. Executive Engineers' Assn. -Vs- State of Gujarat*, reported in 1994 *Supp (2) SCC 591* have held that –

"A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. She has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list, in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.

..... the operation of a waiting list should be confined to the vacancies notified for that examination and not for any vacancy arising in future unless a policy decision is taken by the Government to that effect. Appointment in future vacancies from waiting list prepared by the Commission should be exception rather than the rule. It has many ramifications. In any case, the High Court should not have assumed upon itself the role of appointing authority unless it found that the Government was acting arbitrarily. No rule has been shown that selection of direct recruits was to take place every year. In absence of such rule, the proviso could not apply. However, its validity was not challenged either in the High Court or in this Court. It has, therefore, to be construed so as not to defeat the objective of its enactment. For its working reasonably it has to be understood that once recruitment by direct selection has been made in any year then the quota of direct recruits till then should be deemed to have been exhausted and if any vacancy could not be filled for any reason then it should be deemed to have lapsed and could not be carried forward."

16. In the case of *Madan Lal -Vs- State of J & K*, reported in (1995) 3 SCC 485, the Hon'ble Supreme Court have offered similar view. In a case of selection and appointment to the posts of Additional District and Sessions Judge in Bihar as per an advertisement made by the State of Bihar in September 1989, after written examination and viva-voce a list 129 candidates were selected against the existing vacancies and the concerned High Court in February 1991 recommended the names of 32 candidates in order of merit with necessary particulars for their appointment as Additional District and Sessions Judges in the quota of direct recruits in the Bihar Superior Judicial Service against the existing vacancy prepared by the concerned High Court 32 candidates out of 129 candidates were selected against the existing vacancies and the High Court recommended the names of 32 candidates in order of merit with necessary particulars for their appointment as Additional District and Sessions Judges in the quota of direct recruits in the Bihar Superior Judicial Service. On February 5, 1991 the selected candidates were asked to appear for medical test. The High Court again by letters in March 1991 and June 1991 requested the Government to appoint the candidate at Serial No. 33, since one more vacancy had occurred due to the retirement of one of the officers. In the said backdrop a bench of three Judges of the Hon'ble Supreme Court in the case of *State of Bihar -Vs- Madan Mohan Singh*, reported in 1994 Sup (3) SCC 308, after finding out that that the advertisement and the whole selection process that ensued were meant only to fill up 32 vacancies, have held that –

“the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list prepared on the basis of the written test as well as the viva-voce will hold good only for the purpose of filling up those 32 vacancies and no further because the said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process.”

17. In the case of *Union of India -Vs- B. Valluvan*, reported in (2006) 8 SCC 686, the Hon'ble Supreme Court have held that –

“Recruitment process, as is well known, must be commensurate with the statute or the statutory rule operating in the field. We have noticed hereinbelow, advertisement was made for three posts. It was not indicated therein that

another panel for filling up of the future vacancies was to be prepared by the Selection Committee. In the select list prepared by the Selection Committee, the name of the 1st respondent was at Sl. No. 4. Recommendations were made containing the names of 19 persons for future vacancies. Only because a panel has been prepared by the Selection Committee, the same by itself, in our opinion, would not mean that the same should be given effect to irrespective of the fact that there was no such rule operating in the field. The Selection Committee was bound to comply with the selection process only in terms of the extant rules. It was bound to follow the stipulations made in the advertisement itself. Even in the advertisement it was not indicated that a select list would be prepared for filling up of future vacancies. The Selection Committee, having been appointed only for recommending the names of suitable candidates, who were fit to be appointed, could not have embarked upon the question as regards likelihood of future vacancy.

It is well-settled law that filling up of the vacancies over and above the number of vacancies advertised would be violative of Articles 14 and 16 of the Constitution of India. Mere inclusion of the appellants in the select list of the direct appointees does not confer any right on them to be appointed against the vacancies reserved for promotes."

18. The Hon'ble Supreme Court in the case of *Mukul Saikia -Vs- State of Assam*, reported in (2009) 1 SCC 386 have held that –

"At the outset it should be noticed that the select list prepared by APSC could be used to fill the notified vacancies and not future vacancies. If the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised, even though APSC had prepared a select list of 64 candidates. The select list got exhausted when all the 27 posts were filled. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The fact that evidently and admittedly the names of the appellants appeared in the select list dated 17-7-2000 below the persons who have been appointed on merit against the said 27 vacancies and as such they could not have been appointed in excess of the number of posts advertised as the currency of select list had expired as soon as the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies meant for direct candidates in violation of quota rules. Therefore, the appellants are not entitled to claim any relief for themselves."

19. Considering earlier judgments of the said Court, the Hon'ble Supreme Court in the case of *State of Orissa-vs-Rajkishore Nanda*, reported in (2010) 6 SCC 777 have held that –

"It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under [Article 14](#) read with [Article 16\(1\)](#) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law.

Select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage."

20. In the present case, the Selection Board constituted by the Government of Arunachal Pradesh on 08.04.2017 in its meeting held on 25.04.2017 was to recommend the candidates for the post of "Stock Man" against the advertised 'few post', but the advertisements dated 06.12.2016 neither notified that there shall be a list for future vacancies of 'Stock Man' in the Animal Husbandry & Veterinary Department of the State nor from the said Minutes dated 25.04.2017, it is reflected that the Government of Arunachal Pradesh in its order dated 25.04.2017 directed that said Board to recommend 52 numbers of candidates for future vacancies of 'Stock Man'.

21. As such, the said list of 52 candidates recommended by the Selection Board in the Minutes dated 25.04.2017 for future vacancies of 'Stock Man' has no sanctity of law.

22. Further, as per the Minutes of the said Selection Board dated 25.04.2017, the validity of said list of 52 candidates towards future vacancies of 'Stock Man' Animal Husbandry & Veterinary Department of the State (Annexure-II to the petition) was for six months and petitioners could not place anything before the Court that the period of the same has been extended under authority of law. In terms of said decision dated 25.04.2017 of the Selection Board the

validity, life of duration of the said panel or list being of six months, therefore, it expired on 24.10.2017 in terms of said decision. The petitioners have filed their representation on 30.10.2017 and reminder on 17.01.2018 before the Director of Animal Husbandry & Veterinary Department of the State, after such expiry of the period of six months. In that count also the prayer of the petitioners in unexceptionable.

23. For the reasons above and the aforesaid settled legal proposition, this writ petition being devoid of merit stands dismissed.

JUDGE

Lipak