

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

WRIT PETITION(C) 485 (AP) OF 2009

1. Shri Motilal Tayeng,
Naik, PTC, Banderdewa,
District Papum Pare,
Arunachal Pradesh.
2. Shri Rakesh Kr. Jha,
Constable, Kimin Police Station,
District–Papum Pare,
Arunachal Pradesh.

.....Petitioners

By Advocate:
Mr. T. Pertin, ,
Mr. R Pait,
Mr. C. Modi,
Ms. B Lego,

-Versus-

1. The State of Arunachal Pradesh
Represented by the Commissioner/Secretary,
Home Department,
Government of Arunachal Pradesh.
2. The Director General of Police,
Govt. of Arunachal Pradesh.
3. The Home Minister,
Arunachal Pradesh,
Government of Arunachal Pradesh,
Itanagar.
4. The Asstt. Inspector General of Police,
Government of Arunachal Pradesh.
5. Shri Tabarak Hussain, PHQ Itanagar,
District Papum Pare,
Arunachal Pradesh.
6. Shri R.K. Sutradhar,
PHQ Itanagar,
District Papum Pare,
Arunachal Pradesh.
7. Shri Bimal Kumar, PHQ Itanagar,
District Papum Pare,

Arunachal Pradesh.

8. Shri Vijay Kumar, PHQ Itanagar,
District Papum Pare,
Arunachal Pradesh.
9. Shri Girnidra Ch. Biswas, H/C APP,
Security Cell, Itanagar,
District Papum Pare,
Arunachal Pradesh.
10. Shri Sonam Wangsu, H/C, APP,
C/O SP, Bomdila, West Kameng District,
Arunachal Pradesh.
11. Shri Ngosang Monpa, H/C, APP, C/O
C/O SP, Towang,
District Towang,
Arunachal Pradesh.
12. Shri Vivekhananda Jha, PTC,
Banderdewa, PO & PS Banderdewa,
District Papum Pare,
Arunachal Pradesh.

Respondents.

By Advocate:

Ms. G. Deka, Addl. Sr. GA.

Mr. M. Batt,

Mr. RB Yadav,

Mr. H. Chade,

Mr. P. Sora.

**BEFORE
THE HON'BLE MR. JUSTICE A.C. UPADHYAY**

Date of hearing : **17-03-2011**

Delivery of Judgment
& Order : **17.03.2011**

JUDGMENT AND ORDER(ORAL)

Heard Mr. T. Pertin, learned counsel for the petitioners, and Ms. G. Deka, learned Additional Senior Govt. Advocate, Arunachal Pradesh, appearing for the State

respondents. Also heard Mr. M. Batt, learned counsel, appearing on behalf of the private respondents.

2. The petitioners by filing this writ petition have sought for a direction from this Court to re-conduct the Physical Efficiency Test (Outdoor Test), for promotion to the post of Head Constable from the post of Constable by canceling the promotion given to the private respondents.

3. Facts, leading to the filing of the present writ petition, may be stated, in brief, as follows:

The petitioner Nos.1 and 2 above named have been serving as Naik and Constable continuously for 15 and 16 years respectively, under Arunachal Pradesh Police (hereinafter, in short referred to as 'APP'). In terms of the provisions of Head Constable of Police (Group C Post) Recruitment Rules, 1997 (hereinafter referred to in short as 'the Rules'), the post of Head constable is filled up considering qualifying years of service and merit examination; and the qualifying years for consideration for promotion to the post of Head Constable is (1) minimum 3 years satisfactory service in the grade followed by a merit examination, (2) minimum 5 years of satisfactory service in the cadre by seniority cum merit list. If the above method at (1) and (2) fails 5% of the vacancies would be filled up on deputation.

On 06.12.2007, the Assistant Inspector General of Police, Govt. of Arunachal Pradesh, issued a Circular inviting applications for holding interview for consideration of promotion from the post of Constable to Head Constable. In terms of the

Circular aforesaid, both the petitioners applied for the same and appeared in the Written Test carried out on 02.04.2008 and Physical Efficiency Test (outdoor test), on 02.09.2008 respectively.

Departmental Promotion Committee(DPC) held on 26.12.2008, on due evaluation of the marks obtained by different candidates, could not consider the case of the petitioners on the ground that the petitioner Nos.1 and 2 did not secure better marks than other selected candidates.

It has been contended on behalf of the petitioners that the private respondents, who were physically weaker than the petitioners, were allotted higher marks in Physical Efficiency Test(Outdoor Test) than the petitioners, even some of them were allotted 100% marks i.e. 30 marks out of 30 in Physical Efficiency Test.

On submission of representations by the petitioners, the Director General of Police, after perusing the marks sheets and sensing the irregularities and foul play, issued an order on 19.03.2009, directing the selection Board concerned to re-conduct the Physical Efficiency Test, in between 20.04.2009 to 25.04.2009, by constituting a four members Board under the chairmanship of Shri A.K. Singh, DIGP.

Accordingly, re-test for Physical Efficiency was fixed on 21.04.2009, but some of the constables, who were allotted higher marks, approached the then Minister In-charge of Home Department, Government of Arunachal Pradesh. The Minister In-

Charge, Home Department, vide his Note dated 08.04.2009 advised the then DGP to cancel the re-test, and accordingly, on instructions, re-test was cancelled.

The petitioners have alleged that the marks in the merit test examination for Head Constable were given to the candidates illegally to accommodate certain candidates. The petitioners have prayed for quashing the order passed by the Minister, In-charge, Home Department, Arunachal Pradesh, canceling the proposal made by the Director General of Police, Arunachal Pradesh, for re-conduct of Physical Efficiency(outdoor) Test of the selected candidates.

4. In reply to the above contentions, State respondents have filed affidavit stating therein that the petitioners were not recommended by the DPC neither for promotion nor they were kept in the waiting list as they secured less marks in the Physical Efficiency Test as well as Written Test respectively. Ms. Deka, learned State counsel has submitted that no illegality or unfairness can be attributed in the Written Test as well as Physical Efficiency Test, which were carried out by a group of senior officers in the police Department. Learned State counsel further pointed out that the Chairman of the Promotion Committee was a senior IPS officer in the rank of AIGP level and other three members were also responsible officer of the police Department, therefore, imputation of unfairness and illegality as alleged by the petitioners in awarding the marks to the selected candidates are devoid of substance and do not warrant any interference by this Court. Learned counsel for the State

respondents submitted that the order passed by the then Hon'ble Minister In-Charge of Home Department, canceling the order of re-conduct of Physical Efficiency Test issued by the DGP, Arunachal Pradesh, is an internal policy decision of the Govt., which does not call for any interference under writ jurisdiction of the Court.

5. Mr. Batt, learned counsel for the respondents, relying the decision of the Hon'ble Supreme Court, reported in **(2006) 6 SCC 395 : K.H. Siraj vs. High Court of Kerala & Ors.**, submitted that the petitioners, having participated in the interview, cannot turn round to challenge the selection process when they failed to qualify and contend thereto that awarding of minimum mark for the interview was not properly done in the examination. The relevant extracts of the decision of the Hon'ble Supreme Court, read as follows:

"73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in para 9 of Madan Lal vs. State of J&K : (1995) 3 SCC 486 :1995 SCC(L&S) 712 : (1995) 29 ATC 603 as under: SCC p. 493)

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus

the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In Om Prakash Shukla v. Akhilesh Kumar Shukla : 1986 Supp. SCC 285 : 1986 SCC(L&S) 644 it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

Similarly, in the case of **Sadananda Halo vs. Momtaz : (2008) 4 SCC 619**, it was held by the Hon'ble Supreme Court that High Court is not permitted to take up the fact-finding exercise and to make roving inquiry into the matter. The relevant observation made by the Hon'ble Supreme Court may be depicted as under:-

"58. It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. The High Court not only engaged itself into a non-permitted fact-finding exercise but also went on to rely on the findings of the amicus curiae, or as the case may be, the scrutiny team, which in our opinion was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of a fact-finding commission, that too, more particularly at the instance of those petitioners who were

unsuccessful candidates. The High Court should, therefore, have, restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an appellate tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification.”

6. The moot question for consideration is whether the writ petitioners, having appeared before the interview, without any protest, can challenge the same on being unsuccessful in the said interview. Though the petitioner have generally submitted that the petitioners were physically in good health and ought to have secured better marks than other candidates, but for being physically in good health cannot be the sole reason for securing highest marks or better marks than the other candidates, who were equally physically fit and fine like the petitioners. The fact remains that the petitioner did not alleged any biasness or arbitrariness in the action of any of the members of the interview Board at any point of time. Therefore, on the basis of assumption and surmises of the petitioners that they were not awarded appropriate marks at the time of interview, the entire process of interview cannot be held to be illegal and arbitrary. Arbitrariness or illegality, if any, has to be specifically alleged and established. Without specific indication of arbitrariness on the part of any of the members of the Committee, the propriety and authenticity of the selection process cannot be called in question. As a matter of fact, the petitioners admittedly did not raise any objection in the mode of selection advertised by the

respondent authority concerned, rather appeared in the interview so held for selection of the candidates without any demur or objection, now they cannot turn around to challenge the selection process having failed to secure qualifying marks.

7. The petitioners filed the instant writ petition after the result of the said selection test was published. Applying the principles laid down by the apex Court, in **K.H. Siraj(supra)** and **Sadananda Halo(supra)**, there is no scope to interfere with the selection process carried out by the respondent authority.

8. The order of cancellation of the direction issued by the DGP, Arunachal Pradesh for re-conducting the Physical Efficiency Test, is a policy decision taken by the Govt. therefore, in the facts and circumstances of the present case, there is no scope for this Court to interfere in the policy decision of the Government.

9. In the ultimate analysis, considering the facts and circumstances, this writ petition is devoid of merit and accordingly the same is dismissed. However, I order no order as to costs.

JUDGE