

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C)No.735 of 2019

Victor Thingujam, aged 25 years, s/o Thingujam Borbabu Singh, a resident of Keishampat Hodam Leirak, Imphal, PO & PS, Imphal, Imphal West District, Manipur-795001.

...*Petitioner*

– *Versus* –

1. The Agricultural Scientists Recruitment Board, represented through its Chairman/Secretary, Department of Agricultural Research and Education, Krishi Anusandhan Bhavan-1, Pusa Road, New Delhi-110012.
2. The Controller of Examination, the Agricultural Scientists Recruitment Board, Krishi Anusandhan Bhavan-1, PUSA Road, New-Delhi-110012.
3. The Indian Council of Agricultural Research, represented through its Chairman/Secretary, Krishi Bhavan, Dr. Rajendra Prasad Road, New Delhi-110001.

...*Official Respondents*

4. Nidhi Sharma, M.Sc.(Agriculture) with Major in Agroforestry
5. Suresh Ramanan, S., M.Sc(Forestry) with Major in Silviculture and Agroforestry.

6. Patel Yuvraj Bharat, M.Sc. in Forestry
7. Arun Sukumaran, M.Sc.(Forestry) with major in Tree Improvement.
8. Shyamili M.S., M.Sc.(Forestry) with major in Wildlife Science.

....Private respondents.

with

MC(WP(C))No.116 of 2022

Victor Thingujam, aged 25 years, s/o Thingujam Borbabu Singh, a resident of Keishampat Hodam Leirak, Imphal, PO & PS, Imphal, Imphal West District, Manipur-795001.

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With

WP(C)No.416 of 2019

Victor Thingujam, aged 25 years, s/o Thingujam Borbabu Singh, a resident of Keishampat Hodam Leirak, Imphal, PO & PS, Imphal, Imphal West District, Manipur-795001.

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...Official Respondents

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner : Mr RK Deepak, Adv.

For the Respondents : Mr. Th. Modhu, Sr. Adv., Henba, Adv.

Date of reserved. : 09.02.2023

Date of Judgment & Order : 17.02.2023.

JUDGMENT & ORDER
(CAV)

W.P.(C) No.735 of 2019 has been filed by the petitioner to quash the order dated 7.8.2019 passed by the first respondent to the extent all six provisionally selected candidates are declared as eligible and to direct the official respondents to declare the respondents 4 and 6 and others who do not meet the qualification prescribed in the notification dated 24.1.2018 as ineligible and to direct the official respondents to conduct the interview/via voice test afresh by cancelling the viva voice on 27.5.2019.

2. W.P.(C) No.416 of 2019 has been filed by the petitioner to direct the respondents to allow the petitioner to participate the interview/viva voce for appointment to the post of Scientists in Agricultural Research Services and to postpone the interview/viva voce scheduled to be conducted on 27.5.2019 without the participation of the petitioner.

3. MC (WP) No.116 of 2022 in WP(C) No.735 of 2019 has been filed by the petitioner to direct the official respondents to produce the records relating to the opinions/recommendations of subject experts for determining the eligibility qualifications of the six candidates i.e. the petitioner and the private respondents.

4. Since the parties and the issue involved is one and the same, both the writ petitions were heard together and disposed of by this common order.

5. The case of the petitioner is that the official respondents issued a notification dated 24.1.2018 notifying that Agricultural Scientists Recruitment Board (ASRB) will hold a combined ARS-2017 (Preliminary) and NET (I)-2018 Examination during 6.4.2018 to 13.4.2018 in Online mode at 23 Centres across India in a staggered slot-wise examination format as per the Rules and Schemes of Examination indicated in the notification. Pursuant to the notification dated 24.1.2018, the petitioner has made his application and he was allowed to sit in the Preliminary Agricultural Research Service (ARS) Examination, 2017. On being qualified in the Preliminary Examination, the petitioner was also allowed to

appear in the Agricultural Research Services (ARS) Mains Examination which was held on 24.6.2018. The petitioner was also issued a certificate by the Agricultural Scientists Recruitment Board on qualifying the National Eligibility Test conducted by the Agricultural Scientist Recruitment Board on 10.4.2018 in the discipline of Agroforestry for eligibility of Lecturership/Assistant Professorship. The petitioner qualified in the mains examination held on 24.6.2018 and was short listed for the viva voce test vide result notice dated 30.11.2018.

6. Further case of the petitioner is that in the notice, for Code No.42- Agroforestry, the name of the petitioner appeared at Serial No.6. However, when the Agricultural Scientists Recruitment Board issued the provisional date-wise list of candidates for viva voce, the name of the petitioner did not appear. Thereafter, by an e-mail dated 20.5.2019, the petitioner was informed that his candidatures has been rejected due to non-possession of the prescribed educational qualification with specialization. In the provisional date-wise list of candidates for viva voce test to be held on 27.5.2019 for Agroforestry – Code No.42, the seventh respondent was listed at Serial No.4, who has a degree of M.Sc. in Forestry with specialization in Tree Improvement.

7. Aggrieved by the omission of the candidature of the petitioner from the list, the petitioner has filed W.P.(C) No.416 of 2019 to allow him to participate in the interview/viva voce for appointment to the post of Scientists in Agricultural

Research Services. By the interim order dated 24.5.2019, this Court directed the official respondents to permit the petitioner to provisionally appear for the viva voce test scheduled for 27.5.2019. When the ASR Board published the list of candidates recommended in order of merit for appointment to ARS under the ICAR on 19.7.2019, the respondents 4 and 5 were recommended against vacancies earmarked for UR and OBC respectively omitting the name of the petitioner. Subsequently, the impugned order was communicated to the petitioner, which declares that the petitioner is eligible for consideration to be appointed to the post of ARS. Challenging the impugned order, the petitioner has filed W.P.(C) No.735 of 2019.

8. Respondents 2 and 3 filed affidavit-in-opposition, *inter alia*, stating that after the declaration of the result of ARS-2017 (Mains), the eligibility qualification of the petitioner was checked by the subject matter expert. Since the petitioner possessing M.Sc. (Forestry) in Forest Products and Utilisation instead of the prescribed Master degree in Forestry with specialization in Agroforestry, the expert found him not eligible and, accordingly, his candidature was rejected and the rejection was in terms of the provisions of the notification dated 24.1.2018.

9. It is stated that the expert after examining the eligibility qualification for the respective ARS discipline and declared the eligible candidates. Aggrieved by the omission of the name of the petitioner, he has filed a writ petition before

this Court and in compliance of the interim order dated 24.5.2019 granted in the said writ petition, the petitioner was provisionally called for attending the viva voce and the result was kept in a sealed cover. Subsequently, the subject expert examined the matter and opined that the qualification prescribed in the notification created an ambiguity regarding nomenclature of the degree/course taken by all the six candidates. Due to lack of clarity in the advertisement, the qualification of all the six candidates be considered eligible as they possess M.Sc. (Forestry) in common. Accordingly, the impugned order dated 7.8.2019 was issued declaring all the six candidates of the Agroforestry discipline, including the petitioner to be eligible for consideration to be recommended as Scientist to the ARS based on the actual marks obtained and the vacancies notified.

10. Assailing the impugned order dated 7.8.2019, the learned counsel for the petitioner submitted that after dragging the matter for several months, the ASR Board thought it convenient to declare all the six candidates to be eligible for consideration to be appointed to the ARS vide impugned order dated 7.8.2019 treating all candidates with M.Sc. (Forestry) as qualified under the discipline of Agroforestry. He would submit that the Board erred in declaring the fourth respondent, who was possessing M.Sc. (Agriculture) degree and further the sixth respondent, who has a M.Sc. (Forestry) without any specialization. The

impugned order was not issued to do justice to the parties, rather it was an afterthought and aimed at appeasing some interested parties.

11. The learned counsel for the petitioner further submitted that the petitioner is questioning the discrimination shown to him. Further, the petitioner also questions whether an administrative authority can take an arbitrary and bias decision to suit certain individuals, instead of applying the rule of law.

12. The learned counsel for the petitioner then submitted that the ASR Board cannot hide behind the veil of the opinion of the subject expert to justify a wrongdoing. Even a layman who is not an expert in the field of Forestry would tell that if a candidate having M.Sc. (Forestry) with specialization in Tree Improvement is considered as having a specialization in Agroforestry, what compels the expert to consider the petitioner who has M.Sc. (Forestry) with specialization in Forest Products and Utilization is not having the said qualification. There cannot be different yardstick for different candidates and, as such, the decision is nothing but discriminatory and arbitrary. The action of the Board in subsequently declaring all candidates, including a candidate who does not even have a Master's degree in Forestry as qualified is highly questionable and a ploy to deceive the public and the Scientists of the future who would be building the nation.

13. The learned counsel next submitted that by its own interpretation and admission, the ASR Board has violated the established Doctrine of Approbate and Reprobate, which reflects that a person cannot both approve and reject an instrument at the same time i.e. one cannot blow hot and cold. Therefore, the competent authority of ASR Board has no right to approve what is favourable to it and throw away what is not favourable to it.

14. The learned counsel for the petitioner questioned how many times the ASR Board is going to change its stand regarding the educational qualification of the candidates. For instance, if tomorrow another subject expert points out that none of the six candidates have certificates which mention Agroforestry as their specializations, is the ASR Board going to declare all of them as disqualified.

15. Adding further, the learned counsel for the petitioner submitted that as per the admission of the official respondents “the qualification prescribed in the notification created an ambiguity regarding the nomenclature of the degree taken by all the six candidates” and “due to lack in clarity in the notification, the qualification of all six candidates be considered eligible, as they possess M.Sc. (Forestry) in common”. This statement is erroneous and misleading, as according to the petitioner, all of them do not possess the degree of M.Sc. (Forestry).

16. Arguing so, the learned counsel for the petitioner seeks to quash the impugned order dated 7.8.2019 to the extent all the six provisionally selected candidates are declared as eligible and further direct the official respondents to declare only those who meet the qualification prescribed in the notification dated 24.1.2018 as eligible.

17. Per contra, Th. Modhu, the learned counsel appearing for the official respondents contended that the impugned order was issued after reviewing the eligibility qualification of the candidates by the concerned subject expert and the qualification in respect of both the major and minor courses studied by all the six candidates was scrutinized again and it was found four eligible candidates took relevant courses required for the post of Research Scientist in the field of Agroforestry discipline and two candidates who were not considered eligible to appear for the viva voce also took courses in Forestry, but not much relevant to Agroforestry. Since the qualification prescribed in the notification created an ambiguity qua nomenclature of the courses taken by all the six candidates, all the six candidates are considered by the subject expert as they possess the degree of M.Sc. (Forestry) in common.

18. The learned counsel would submit that the fourth respondent has got M.Sc. (Agriculture) degree with specification in Agroforestry and the recommendation of the subject expert is not arbitrary. He submitted that the

ASR Board observes that since the qualification for Agroforestry discipline in the notification mentioned M.Sc. in Forestry and does not specifically mandate specialization in Agroforestry, since all the six candidates can be considered to be qualified based on either being M.Sc. Forestry or having specialization in Agroforestry. Based on this, it was decided that all the candidates with M.Sc. (Forestry) can be considered to be qualified under the discipline of Agroforestry and all the six concerned are declared to be eligible for consideration to be appointed to ARS based on the actual marks obtained by them and the vacancies notified.

19. The learned counsel further submitted that the petitioner is merely expressing an assumption regarding the scoring in viva voce. The Board conducts ARS (Preliminary), ARS (Mains) examination and viva voce in an impartial manner and has not faced any complaint in regard to the discrimination against any particular candidates.

20. The learned counsel urged that the petitioner has got Master's Degree (Forestry) with specialization in Forest Products and Utilization, which is quite different from the prescribed specialization in Agroforestry for Research Scientist and was declared ineligible by the subject expert. However, based on the courses opted in Agroforestry by the petitioner in M.Sc., his qualification was reviewed and he was declared eligible due to lack of clarity in the notification regarding nomenclature of courses taken by the candidates. The NET

certificates are issued to the candidates who obtained minimum prescribed qualifying marks. The documents in support of their eligibility for NET examination were not sought from candidates and their eligibilities were not checked by the ASRB. It is the responsibility of the concerned State Agricultural Universities to satisfy themselves with regard to fulfillment of the requisite posts of Lecturers/Assistant Professors, including verifying the authenticity of the NET certificate in the possession of the candidates before the candidates are formally appointed.

21. The learned counsel finally argued that the eligibility qualification along with specialization possessed by the qualified candidates to be provisionally called for viva voce is always checked by the subject expert concerned and, further, the viva voce is also conducted by a Committee comprised of outside experts chaired by the Chairman/Member(s) concerned of the Board and that the writ petition is not maintainable, as this Court has no jurisdiction to entertain the writ petition under Section 14 of the Administrative Tribunals Act, 1985, inasmuch as in view of the notification dated 20.4.1987 published in the Gazette of India. Thus, a prayer has been made to dismiss the writ petition.

22. This Court considered the rival submissions and also perused the materials available on record.

23. As per the prayer made by the learned counsel for the petitioner, on 23.09.2021 this Court directed the respondents to produce the entire original files

relating to the 6(six) candidates and accordingly the same was produced. This Court also while considering the case on merits perused the entire original records pertaining to the selection of 6(six) candidates as produced by the official respondents.

24. The grievance of the petitioner is that the impugned order is arbitrary, bias and illegal. The manner in which all six candidates were declared as eligible is illegal and, in fact, the declaration of all the six candidates as eligible to be appointed is an afterthought.

25. The contention of the learned counsel for the petitioner is that a candidate who does not have a Master's degree in Forestry, as in the case of the fourth respondent, who has a Master's degree in Agriculture; a candidate who does not have specialization exclusively in Agroforestry, as in the case of the fifth respondent, who has M.Sc. (Forestry) with specialization in Silviculture and Agroforestry; a candidate who does not have a specialization in Agroforestry as in the case of the sixth respondent, who has M.Sc. (Forestry) without any specialization; and, a candidate who has specialization in a discipline related to Agroforestry, as in the case of the seventh respondent, who has M.Sc. (Forestry) with specialization in Tree Improvement have been considered for appointment. Thus, the petitioner strongly contended that when all the aforesaid candidates were treated by the ASR Board as qualified for appearing in the viva voce dated

27.5.2019, what reasons and justifications compelled the ASR Board to treat a similarly situated candidate like the petitioner differently and declared him ineligible at the last moment in the earlier occasion.

26. In reply, the learned counsel for the official respondents contended that the eligibility qualification along with specialization possessed by the qualified candidates to be provisionally called for viva voce is always checked by the concerned subject expert in view of the prescribed eligibility qualification for the respective ARS disciplines as notified in the notification. He would submit that the concerned subject expert examines whether a candidate possesses eligibility qualifications for the respective ARS discipline and accordingly declared as eligible.

27. Pursuant to the notification dated 24.1.2018, the petitioner appeared in the ARS Examination-2017, which was conducted in combination with ARS-2017 (Preliminary) and NET(I)-2018 Examination conducted between 6.4.2018 to 13.4.2018 in Online mode at 23 centres across India in a staggered slot-wise examination format as per the Rules and Schemes of the Examination. The petitioner cleared the preliminary examination and also the main written examination which was conducted on 24.6.2018 and the provisional list of candidates qualified for viva voce under 29 disciplines was uploaded on the website of ARS Board. The petitioner was shortlisted for the viva voce along with other 5 other candidates. However, even after the issuance of the

provisional list way back in November 2018, no date for viva voce was intimated. On enquiry, when the petitioner came to realize that the ASR Board had published another provisional date-wise list of candidates for viva voce and knowing that his name was excluded in the newly published list thereby rejecting his candidature on the ground of non-possession of the requisite qualification, the petitioner has filed W.P.(C) No.416 of 2019. This Court, in its interim order dated 24.5.2019, directed the official respondents to allow the petitioner to appear at the viva voce conducted on 27.5.2019. Thereafter, ASR Board published list of candidates recommended in order of merit for appointment to ARS under the ICAR on 19.7.2019. In the said list, two candidates, namely, the respondents 4 and 5 were recommended against vacancies earmarked. Subsequently, the impugned order came to be passed declaring that all the six candidates, including the petitioner are eligible for consideration to be appointed.

28. According to the official respondents, the reason for considering the petitioner second time for appointment to ARS is that the eligibility qualification of all the candidates of Agroforestry discipline was re-checked by the concerned subject expert as it was opined that the qualification prescribed in the advertisement created an ambiguity regarding nomenclature of the degree/courses taken by all the six candidates. It has also been stated that due to lack of clarity in the advertisement, the qualification of all the six candidates considered as they possess M.Sc. (Forestry) in common. Accordingly, the

impugned order was passed declaring all the six candidates of the Agroforestry discipline, including the petitioner eligible.

29. The petitioner questions the consideration of respondents 4 and 6 and others not eligible, as they have not fulfilled the prescribed educational qualification and the subject expert erred in declaring them as eligible.

30. The respondents 2 and 3 filed affidavit-in-opposition stating that due to lack of clarity in the advertisement, the qualifications of all the six candidates was considered eligible as they possess M.Sc. (Forestry) in common. The aforesaid statement made in the affidavit-in-opposition is completely erroneous as they do not possess the degree of M.Sc. (Forestry) – the fourth respondent possesses M.Sc. in Agriculture and the sixth respondent possesses M.Sc. Forest without any specialization.

31. As rightly argued by the learned counsel for the petitioner, ASR Board probably on the recommendation of the subject expert, declared that a Master Degree in Agriculture is the same as a Master Degree in Forestry; M.Sc. (Forestry) with specialization in Silviculture & Agroforestry and Tree Improvement are the same as Master Degree in Forestry; candidates who do not have a specialization in Agroforestry as a Master Degree in Forestry, which this Court is of the considered opinion is unsustainable in law. The aforesaid conclusion arrived at by the expert has not been properly justified by the official

respondents. By its own admission, the ASR Board has violated the well established doctrine of approbate and reprobate, which could be evident from the materials available on record.

32. It is to be noted that no valid evidentiary proof has been produced by the official respondents to prove their case. Furthermore, it is seen that the eligibility qualifications of all the six candidates were scrutinized in the back drop of the Court cases filed by two candidates who were disqualified based on their M.Sc. specialization and when the qualification in respect of both the major and minor courses studied by all the six candidates were scrutinized again where it was found that four candidates studied relevant courses required for the post of Research Scientist in the field of Agroforestry and were declared eligible, while the two also studied courses in Forestry, but not much relevant to Agroforestry and were declared eligible is not appreciable for the simple reason that a person cannot both approve and reject a fact at the same time.

33. The documents produced by the official respondents do not indicate anywhere that recommendations of subject expert regarding the eligibility of the candidates were obtained at each stage where the eligibility issue was considered, in contrast to what the official respondents made to appear. The only conclusion that can be drawn from the above is that the eligibility of candidates was decided beforehand by the official respondents at their whims

and fancies only to favour a few candidates and the so called recommendation was moulded to suit their interest.

34. On overall analysis of the matter on hand and as rightly argued by the learned counsel for the petitioner, there are several contradictions in the conclusion arrived at by the ASR Board and the expert and few are summarized hereunder:

- (i) The ASR Board observed the qualification for Agroforestry discipline in the notification mentioned M.Sc. in Forestry and does not specifically mandate specialization in Agroforestry.

The aforesaid observation contradicts with the eligibility qualification specified in the advertisement i.e. "Master's degree in Forestry/Agroforestry/Botany/Agronomy/Horticulture with specialization in Agroforestry".

- (ii) If the specialization in Agroforestry is said to be not mandated by the Board and can be ignored, then on what basis the Board selected the fourth respondent, who has a Master's degree in Agriculture.

In view of the discussions held supra, the fourth respondent does not have M.Sc. in Forestry.

- (iii) If we apply the same logic adopted by the Board in accepting the candidature of the fourth respondent, it is questionable - can a person who has Master's degree in Chemistry be accepted because Chemistry is also a Science stream and also related to Forestry or Agroforestry.

The ASR Board is bound to accept the candidature of the person illustrated because just like the fourth respondent as she does not have a Master's degree in Forestry and specialization in Agroforestry is not mandatory as per the Board.

- (iv) After the recruitment process started, the Board has changed the rule and changing the rule after the process started is impermissible in the eye of law.

35. The issue of relevancy of courses becomes significant in the context of what the Board states – while two candidates studied courses in the Forestry, but not much relevant to Agroforestry, they were declared ineligible. Where the seventh respondent, who obtained M.Sc. (Forestry) with specialization in Tree

Improvement is found eligible, the petitioner who possess M.Sc. (Forestry) with specialization in Forest Products and Utilization is found ineligible by the Board. The conduct of the subject expert in arriving at the conclusion in respect of the petitioner not eligible at the earlier stage is unacceptable. There appears to be a discrimination as rightly argued by the learned counsel for the petitioner.

36. It is apposite to note that the sequence of events leading to the declaration of all the six candidates as eligible demonstrates a mala fide intention on the part of the official respondents to help some candidates at the cost of others. This Court is also of the view that declaring the petitioner as eligible, only after the viva voce test was conducted and after two candidates were recommended for appointment, is merely a ploy to eliminate the petitioner. Therefore, declaring all the six candidates as eligible vide impugned order is contrary to the qualification prescribed in the notification dated 24.1.2018 and the Board cannot give different meanings to the qualification so prescribed which is specific and unambiguous and also it is imperative on the part of the Board to declare only those who meet the qualification prescribed in the said notification as eligible.

37. Declaring even ineligible candidates as eligible reduced the chances of those who are eligible as per the notification from being recommended for appointment. There is also no convincing reasoning coming forth from the side

of the official respondents for declaring candidates with no specialization as eligible.

38. As stated supra, the petitioner is a Post Graduate in M.Sc. Forestry with major in Forestry Products and Utilization. The specialization in Forestry Products and Utilization is so closely related to a specialization in Agroforestry. In other words, as per the subject expert himself, the two may mean the same. Recognizing the similarity between the two, the petitioner was also awarded NET qualification in the discipline of Agroforestry by the Board itself. Therefore, this Court is of the view that the petitioner has fulfilled the qualification required for the post in question compared with others.

39. For all the reasons stated above, this Court is of the considered view that the petitioner has made out a case in favour him and the impugned order to the extent all the six provisionally selected candidates declared as eligible is liable to be set aside. Thus, the official respondents are duty bound to declare only those who meet the qualification prescribed in the notification dated 24.1.2018.

40. In the result,

- (i) W.P.(C) No.735 of 2019 is allowed.
- (ii) The official respondents are directed to declare only those who meet the qualification prescribed in the notification dated 24.1.2018

as eligible. Inasmuch as the petitioner was found eligible based on his qualification, the official respondents shall decide as to whether he needs to be subjected to fresh viva voce again. The impugned order stands quashed to the extent indicated above.

- (iii) The official respondents shall consider the candidature of respondents 4 and 6 and others afresh and decide whether viva voce needs to be held or not.
- (iv) The said exercise is directed to be completed within a period of two months from the date of receipt of a copy of this order.
- (v) In view of the participation of the petitioner in the viva voce held earlier, W.P.(C) No.416 of 2019 stands closed.
- (vi) Consequently, MC (WP) No.116 of 2022 in WP(C) No.735 of 2019 is dismissed.
- (vii) No costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom