



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 386/2021

1: Banboh Nyitan and Anr
S/o Shri Tarung Nyitan,
Resident of Mow II, Itanagar, P.O and P.S Itanagar, Papum Pare District, Arunachal Pradesh, Itanagar. Pin 791111

2: Tagru Dolu
S/o Shri Tagru Tagak

Presently residing at Chandranagar
P.O and P.S Itanagar
Papumpare
Arunachal Pradesh and President of All Arunachal Pradesh Anti Corruption Association
Itanagar
Papum Pare District
Arunachal Pradesh

VERSUS

1: THE STATE OF AP and 14 Ors.
Represented by the Secretary/Commissioner, Department of Finance, Govt. of Arunachal Pradesh, Itanagar

2: The Director Accounts and Treasuries
Govt. of Arunachal Pradesh
Itanagar
P.O and P.S Itanagar
Arunachal Pradesh

3: The Joint Director of Accounts and Treasuries
Govt. of Arunachal Pradesh
Itanagar
P.O and P.S Itanagar
Arunachal Pradesh
Pin No. 791111

4:Noklem Manham
LDC and posted at Sub Treasury Officer Longding
P.O and P.S Longding
District Longding
Arunachal Pradesh

5:Tokgul Libang
LDC and posted at Sub Treasury Office
Pangin
P.O and P.S Pangin
District Siang
Arunachal Pradesh

6:Kego Doye
LDC and posted at Sub Treasury Office
Miao P.O and P.S Miao
District Changlang
Arunachal Pradesh

7:Papi Hiffo
LDC
posted at Sub Treasury Officer
Sagalee
P.O and P.S Sagalee
Papum Pare District
Arunachal Pradesh

8:Nung Tamuk
UDC
Sub Treasury Office Pangin
P.O and P.S Pangin
District Siang
Arunachal Pradesh

9:Keampho Kamhudam
UDC
Sub Tresury Office
Mio
P.O and P.S Mio
District Changlang
Arunachal Pradesh

10:Phechak Wangsa
UDC
Sub Treasury Office
Longding
P.O and P.S Longding
District Longding
Arunachal Pradesh

11:Acho Kipa Biri
UDC
posted at Sub Treasury Office Sagalee
P.O Sagalee
District Papum Pare
Arunachal Pradesh

12:Techi Yater
UDC cum Accountant and posted at Sub Treasury Office Sagalee
P.O Sagalee
District Papum Pare
Arunachal Pradesh

13:Padi Oku
UDC cum Accountant and posted at Sub Treasury Office
Pangin
P.O. Pangin
P.S Pangin
District Siang
Arunachal Pradesh

14:Nyadar Gadi
UDC cum Accountant and posted at Sub Treasury Office
Miao
P.O and P.S Miao
District Changlang
Arunachal Pradesh

15:Likha Raj
UDC cum Accountant

posted at Sub Treasury Office
Longding
P.O and P.S Longding
District Longding
Arunachal Pradesh

Advocate for the Petitioner : Abhai Kumar Singh, T. Tsering, T. Bagang

Advocate for the Respondent : Mr. Subu Tapin, GA (AP), Mr. U. K. Nair, Senior Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE NANI TAGIA

Date of hearing : 01-02-2023

Date of Judgment & Order : 28-04-2023

JUDGMENT & ORDER(CAV)

Heard Mr. Abhai Kumar Singh, learned counsel for the petitioners.

Also heard Mr. Subu Tapin, learned Senior Government Advocate, appearing on behalf of the State Respondents No. 1 to 3; and Mr. U. K. Nair, learned senior counsel, appearing on behalf of the private Respondents No. 4 to 15.

2. By filing this writ petition, the petitioners have put to challenge the appointment of respondents No. 4 to 15 as Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, by issuing an order of appointment on various dates, such as, 28.04.2017, 26.05.2017 and 20.06.2017, by the Director of Accounts & Treasuries, Government of Arunachal Pradesh, Itanagar, with a further direction to the respondent authorities to advertise the aforesaid post of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, and fill up the same through the competitive examinations as per the relevant Recruitment Rule.

3. The facts leading to filing of the present writ petition by the petitioners, briefly stated, are as follows:

The petitioner No. 1 is a graduate having received his degree in Bachelor of Arts in 2016, from Rajiv Gandhi University, Rono Hills, Doimukh, Itanagar. The petitioner No. 2 is the president of All Arunachal Pradesh Anti-Corruption Association (AAPACA).

According to the petitioners, the respondents No. 4 to 15 were appointed as Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, by the Director of Accounts & Treasuries, Government of Arunachal Pradesh, Itanagar, without following the due process of selection in accordance with the Recruitment Rule and the constitutional scheme of public employment, by issuing the appointment orders to the respondents No. 4 to 15 on various dates, vide various Office Order numbers, which are, as follows:

- (1). Respondent No. 4 was appointed as LDC vide No. DA/TRY/53/90/Pt(I) dated 28.04.2017.
- (2). Respondent No. 5 was appointed as LDC vide No. DA/TRY/53/90/Pt(III) dated 20.06.2017.
- (3). Respondent No. 6 was appointed as LDC vide No. DA/TRY/53/90/Pt(II) dated 26.05.2017.
- (4). Respondent No. 7 was appointed as LDC vide No. DA/TRY/53/90/Pt(IV) dated 20.06.2017.
- (5). Respondent No. 8 was appointed as UDC vide No. DA/TRY/53/90/Pt(III) dated 26.05.2017.
- (6). Respondent No. 9 was appointed as UDC vide No. DA/TRY/53/90/Pt(II) dated 26.05.2017.
- (7). Respondent No. 10 was appointed as UDC vide No. DA/TRY/53/90/Pt(I) dated 28.04.2017.

- (8). Respondent No. 11 was appointed as UDC vide No. DA/TRY/53/90/Pt(IV) dated 20.06.2017.
- (9). Respondent No. 12 was appointed as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-IV) dated 20.06.2017.
- (10). Respondent No. 13 was appointed as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-III) dated 20.06.2017.
- (11). Respondent No. 14 was appointed as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-II) dated 20.06.2017.
- (12). Respondent No. 15 was appointed as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-I) dated 20.06.2017.

The petitioners contend that the State respondents by an order, dated 04.07.2016, issued by the Commissioner (Finance), Government of Arunachal Pradesh, vide order No. DA/TRY/37/2011, had created various posts in the Directorate of Accounts & Treasuries, Government of Arunachal Pradesh, which included 4(four) posts, each, of the Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, respectively. It is on the above 4(four) posts each of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, created by the aforesaid order dated 04.07.2016, issued by the Commissioner(Finance), Government of Arunachal Pradesh, Itanagar, that the respondents No. 4 to 15 have been appointed as Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, respectively, as described hereinabove, without following the due process of selection in accordance with the Recruitment Rule, besides, in violation of the constitutional scheme of making an appointment to a public post which ought to be made by putting up a public advertisement for filling up of the aforesaid posts in order to provide equal opportunity of participation to all the eligible candidates.

The petitioners, accordingly, contends that the appointment of respondents No. 4

to 15 in the posts of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, are liable to be set aside and quashed, for not having appointed the respondents No. 4 to 15 in accordance with law.

4. The respondents No. 2 & 3 have contested the case by filing a counter-affidavit. In the counter-affidavit filed, the respondents No. 2 & 3 have not denied the creation of various posts including 4(four) posts, each, of the Lower Division Clerk, Upper Division Clerk and UDC-cum-Accountant, vide order, dated 04.07.2016, issued by the Commissioner (Finance), Government of Arunachal Pradesh, Itanagar.

The respondents No. 2 & 3, in the counter-affidavit filed; have, neither, denied the contention raised by the petitioners, nor, have averred anywhere in the counter-affidavit that the appointment of respondents No. 4 to 15 were made on the basis of selection made in accordance with the Recruitment Rule as well as by following the constitutional scheme for making an appointment to a public post. While not denying the contention of the petitioners and also not making any specific averments that the respondents No. 4 to 15 were appointed after due process of selection, the respondents No. 2 & 3 have further stated in the counter-affidavit that the private respondents had filed a case being WA 64/2019 in the High Court and the matter is under submission to the Government for taking necessary action in terms of the High Court's order, dated 19.03.2019.

5. The respondents No. 4 to 15 have also contested the case by filing a counter-affidavit. In the counter-affidavit filed, the private respondents No. 4 to 15 have also not denied the contention of the petitioners. While neither denying the contention raised by the petitioners, nor, making a specific averment stating that they were appointed by the respondent authorities after a due process of selection was made by following the Recruitment Rule and the constitutional scheme of appointment to a public post, the respondents No. 4 to 15 in paragraphs No. 4 & 6

of the counter-affidavit filed, have stated that the appointment orders issued by the respondent No. 2, on 28.04.2017, 26.05.2017 and 20.06.2017, were recalled by the Development Commissioner(F,P&I), Government of Arunachal Pradesh, Itanagar, and issued a fresh appointment order, vide No. DA/1/3/88/Vol-V dated 12.10.2017, approved by Shri Ashish Kundra, Development Commissioner(F,P&I), Government of Arunachal Pradesh, Itanagar, and the appointment order, dated 12.10.2017, was made on humanitarian ground, which was not under challenge in the writ petition viz. WP(C)386(AP)2021.

In paragraph No. 6, thereof, it has been further submitted that the issue raised in the instant writ petition, was also the issue raised in WP(C)634(AP)2018 and it was decided on 01.03.2019 by the Single Judge of this Court and thereafter, by the Division Bench of the Court in WA 64(AP)2019, vide order, dated 19.03.2019, and the same has attained finality since then. Accordingly, it is contended by respondents No. 4 to 15 that this writ petition is not maintainable in law.

6. Mr. Singh, learned counsel for the petitioners, has argued that the appointment of respondents No. 4 to 15 having not been made by holding a due process of selection in accordance with the Recruitment Rule as well as in accordance with the constitutional scheme of public appointment, the appointment of respondents no. 4 to 15 in the posts of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, respectively, are liable to be set aside and quashed with a further direction to the respondent authorities to fill up the said 12 posts held by the respondents No. 4 to 15 in accordance with the relevant Recruitment Rule and by following the constitutional scheme for appointment to a public post.

7. Mr. Tapin, learned Senior Government Advocate representing the State respondents, by referring to the counter-affidavit filed by respondents No. 2 & 3, has fairly submitted that the respondents No. 4 to 15 were appointed by the

respondent No. 2, admittedly, without any selection made by the respondent authorities in accordance with the Recruitment Rule as well as by putting up a public advertisement for such selection.

8. Mr. Nair, learned senior counsel representing respondents No. 4 to 15, has submitted that since, the respondents No. 4 to 15 have served for more than 4(four) to 5(five) years and has gained experience, in the meanwhile, therefore, the respondents No. 4 to 15 may be allowed to continue in the said posts till regular selection is held and appointment made pursuant thereto.

9. Rival submissions advanced at the Bar have received due consideration of this Court.

10. Upon hearing the learned counsels appearing for the parties and on perusal of the materials available on record, it is noticed that by an order dated 04.07.2016, issued by the Commissioner(Finance), Government of Arunachal Pradesh, Itanagar, vide No. DA/TRY/37/2011, 4(four) posts each of Sub-Treasury Officer, Upper Division Clerk-cum-Accountant, Upper Division Clerk, Lower Division Clerk, MTS(Chowkidar) as well as 8(eight) posts of MTS(Peon), was created for the Directorate of Accounts & Treasuries, Government of Arunachal Pradesh. Pursuant to the creation of the aforesaid posts, which included 4(four) posts, each, of Upper Division Clerk-cum-Accountant, Upper Division Clerk, Lower Division Clerk, respectively; the private respondents No. 4 to 15 were appointed by the respondent No. 2, the Director of Accounts & Treasuries, Government of Arunachal Pradesh, vide various appointment order numbers and dates, mentioned in paragraph No. 2, hereinabove.

11. Contending that the respondents No. 4 to 15 were appointed by the respondent No. 2 vide various appointment order numbers and dates mentioned in paragraph No. 2 hereinabove, without conducting recruitment process in

accordance with the Recruitment Rule as well as without advertising the said posts for such recruitment; the petitioners, in paragraphs No. 11 and 12 of the writ petition, has stated as under:

"11. That the petitioner begs to state that they have obtain the appointment order of the private respondents through Right to information Act 2005 from the concern department and the same was provided, furnishing the detail appointment order and some queries sought by the petitioners had been given in the said information. The respondent No. 4 to 15 were directly appointed as LDC, UDC and UDC-cum-Accountant, in the Department of Accounts and Treasuries vide order No. DA/TRY/53/90 dated 26.05.2017, DA/I/3/88-Vol-V dated 16.10.2017 respectively on humanitarian ground and it decided to maintain status Quo till further order in respect of appointment to the post of LDC, UDC and UDC cum Accountant without conducting any competitive examinations or interview. Further more the aforesaid appointments have been made on temporary basis against the sanctioned posts and admittedly against the direct recruitment quota."

"12. That the petitioners states that though the respondents have been appointed on humanitarian ground, still they are allowed to continue in the said posts till date without there being any steps taken by the State respondents to fill up such post on regular basis through proper selection process by way of conducting written examination and interview. Such action on the part of the State respondents in giving preferential treatment to the private respondents and depriving equal opportunity to the petitioners and other qualified and eligible candidates is totally illegal and discriminatory and against the Constitutional Rights enshrined under Article 14 & 16 of the Constitution of India. Therefore, this Hon'ble Court may be pleased to set aside the impugned series of appointment orders dated 28.04.2017, 26.05.2017 & 20.06.2017 of the private respondent No. 4 to 15 and may further be pleased to direct the respondent authorities to fill up the same through proper selection process thereby giving equal opportunity to the petitioners as well as all other eligible candidates."

In answering the contention raised by the petitioners in paragraphs No. 11 & 12 of the writ petition, the respondents No. 2 & 3, in paragraph No. 8, of the counter-affidavit filed, it has been stated, as under, which is reproduced herein below:

"8. That with regard to the statement made in paragraphs - 8, 9, 10, 11 and 12 of the writ petition, the answering respondent offer no comments."

The respondents No. 4 to 15 in paragraph No. 6 of the counter-affidavit filed

by them, has answered the contention of the petitioners in paragraphs No. 11 and 12 of the writ petition, in the following manner, which is, as under:

"6. That with regard to the statements made in paragraph no. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the writ petition, the answering deponent begs to state that the same issues being the subject matter of writ petition (C) No. 634(AP)/2018 and it was decided on dated 01.03.2019 by the Hon'ble Single Judge of Itanagar Permanent Bench, Gauhati High Court. Thereafter, the Hon'ble Division Bench in WA No. 64(AP)/2019 on dated 19.03.2019 had decided the same issues and it attained finality. Therefore, this writ petition is not maintainable under the purview of law."

12. Thus, it is evident that the contention raised by the petitioners, that the respondents No. 4 to 15 were appointed by the respondent No. 2 i.e. Director, Accounts & Treasuries, Government of Arunachal Pradesh, Itanagar, as Upper Division Clerk-cum-Accountant, Upper Division Clerk and Lower Division Clerk, without due process of selection has, neither, been controverted by the State respondents, nor, by the respondents No. 4 to 15.

13. In view of the above, it can be safely concluded that the respondents No. 4 to 15 were appointed by the respondent No. 2 by resorting to pick-and-choose manner and in violation of the fundamental rights guaranteed under Articles 14 & 16 of the Constitution of India, not only, of the petitioners, but, of all other eligible candidates, as well, who may have participated for such a selection, had the due process of selection in accordance with the recruitment rule, was resorted to by the respondent authorities.

14. Nonetheless, the defence taken by the respondents No. 4 to 15 in the counter-affidavit filed by them stating in Paragraph-6, thereof, that the issue raised in the instant writ petition was also a subject-matter of adjudication by this Court in WP(C)634(AP)2018 and WA 64(AP)2019, which had attained finality and therefore, this writ petition is not maintainable, may now be examined.

15. A perusal of the order, dated 19.03.2019, passed in WA 64(AP)2019, indicates that after the respondents No. 4 to 15 were appointed as Upper Division Clerk-cum-Accountant, Upper Division Clerk and Lower Division Clerk, respectively, by various orders of appointment, dated 28.04.2017, 26.05.2017 and 20.06.2017; the respondent authorities realizing the illegality committed in appointing the respondents No. 4 to 15 without following due process of selection, had issued a Show Cause Notice, dated 16.11.2018, whereby, they were asked to show cause as to why the orders of appointment issued in their favour in contravention of the relevant Recruitment Rule, should not be cancelled.

The Show Cause Notices, dated 16.11.2018, were challenged by respondents No. 4 to 15, by filing various writ petitions before this Court, one such writ petition being WP(C)634(AP)2018. The WP(C)634(AP)2018 along with other connected writ petitions filed by respondents No. 4 to 15 was disposed of by the Single Bench of this Court by holding that the writ petition filed, challenging the Show Cause Notices, dated 16.11.2018, is premature, inasmuch as the petitioners/ Respondents No. 4 to 15, herein, at the outset, were only required to reply to the show cause notices whereupon the respondents were to take appropriate decision in accordance with law. While disposing the writ petition, the petitioners were allowed to respond to the impugned show cause notice individually before the authority concerned, if they had not yet responded.

The aforesaid order of the Single Bench passed in WP(C)634(AP)2018 and other connected writ petitions were challenged by the respondents No. 4 to 15 herein/writ petitioners, by filing various writ appeals, one such writ appeal being WA 64(AP)2019.

In the appeal, the appellants had contended that the appointment of respondents No. 4 to 15, herein, were temporary in nature and therefore, the same being contrary to the Recruitment Rule, does not arise. It was also

contended that by issuing a show cause notice to the appellants/ respondents No. 4 to 15, herein, the respondent authorities are seeking to replace the appellants/respondents No. 4 to 15, herein, by making other temporary appointments, which is not permissible in law. It was also contended that if regular process of appointment is undertaken, the appellants/ respondents No. 4 to 15, herein, would have the opportunity to participate in such process of selection and, until then, the appellants/respondents No. 4 to 15, herein, would be entitled to continue.

It was in the light of the aforesaid contention made by the appellants/respondents No. 4 to 15, herein, the Division Bench, in the order, dated 19.03.2019, passed in WA 64(AP)2019, and other connected writ appeals, had observed that it is necessary to clarify that even after reply to the show cause, if a decision is taken by the respondents against the appellants, it is made clear that the respondents shall not replace the appellants with another set of temporary appointees. With the above observation, the appellants/ respondents No. 4 to 15, herein, was given the liberty to put forth their reply to the show cause notice, to which, the respondent authorities were directed to consider in accordance with law.

16. Thus, the issue before WP(C)634(AP)2018 and other connected writ petitions, was the legality of the Show Cause Notice, dated 16.11.2018, issued to the petitioners/ respondents No. 4 to 15, herein, asking them to show cause as to why the orders of appointment issued contrary to the relevant Recruitment Rule, should not be cancelled and the issue before the writ appeal being WA 64(AP)2019 and other connected writ appeals, was the legality of the decision rendered by the Single Judge of this Court in the aforesaid writ petition, holding that the writ petition is premature inasmuch as the petitioners in the writ petition, were only required to reply to the show cause notices, whereupon, the respondents would take appropriate decision in accordance with law.

17. Accordingly, the legality of the impugned orders of appointment given to the respondents No. 4 to 15, herein, who were the writ petitioners in WP(C)634(AP)2018 and other connected writ petitions, as well as appellants in WA 64(AP)2019 and other connected writ appeals, was not at all an issue in WP(c)634(AP)2018 and other connected writ petitions and in WA 64(AP)2019 and other connected writ appeals.

18. In that view of the matter, the defence taken by the respondents No. 4 to 15 in Paragraph-6 of the counter-affidavit filed that the issue raised in the instant writ petition, was also the issue raised earlier in WP(C)634(AP)2018 and WA 64(AP)2019 and the decision rendered in those proceedings had attained its finality and therefore, the instant writ petition is not maintainable in law; is found to be incorrect and the same cannot be countenanced.

19. It may also be noted herein that from the averments made in paragraph No. 9 of the counter-affidavit filed by respondents No. 4 to 15, the State respondents are yet to take a decision on the reply submitted by respondents No. 4 to 15 to the Show Cause Notice, dated 16.11.2018, despite the direction of the Division Bench of this Court, dated 19.03.2019, passed in WA 64(AP)2019, as well as in the connected writ appeals, to take an appropriate decision on the reply filed by the appellants/respondents No. 4 to 15, herein, in accordance with law.

20. It has also been noticed from the pleadings made in paragraphs No. 8 and 9 of the writ petition by the petitioners, which have not been denied by the respondent authorities in their counter affidavits that there is a set of Rule called "*General Arunachal Pradesh Group 'C'(Ministerial) Common Recruitment Rules, 2008*", issued by the Commissioner & Secretary to the Department of Administrative Reforms, Government of Arunachal Pradesh, Itanagar, vide memo. No. AR-61/2007/521, dated 17.03.2008, for filling-up the posts of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant.

21. Having found that the appointment of Respondents No. 4 to 15 in the post of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, was not made by the authorities following the due process of selection in accordance with the relevant Recruitment Rule and also having noted that the issue raised in WP(c)634(AP)2018 and WA 64(AP)2019, was different and distinct from the issue raised in the instant writ petition; the law as to how the appointment in a public post is to be made, may, now, be examined.

22. In the case of ***Secretary, State of Karnataka & ors. V. Uma Devi(3) & ors.***, reported in ***(2006) 4 SCC 1***, in paragraph No. 2 thereof, the Hon'ble Supreme Court has held as under:

"2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme."

23. By following the aforesaid decision of the Hon'ble Supreme Court in ***Uma Devi***(supra), this Court in the case of ***Tagam Dong & ors. v. Government of Arunachal Pradesh & ors.***, reported in ***2020(2) GLT 880***, has held in paragraph No. 22, as under:

"22. In view of the above, the impugned regularisation Order dated 21.01.2015, issued by the respondent authorities, regularising the services of respondent Nos. 6 to 12 in the post of Technical Assistant must be held to be unconstitutional for having issued the regularisation order in violation of the related Recruitment Rule as well as Constitutional norms of giving equal opportunity to all the eligible candidates to participate in the selection process to be undertaken by the respondent authorities by putting up a public advertisement. The decision rendered by the Hon'ble Supreme Court in

Secretary State of Karnataka vs. Umadevi(3) (supra), relied on by the respondent Nos. 6 to 12 itself makes the above position of law clear when it says in paragraph-2 of the judgment as follows:

"2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme."

Thus, when 7(seven) posts of Technical Assistants were created by the respondent authorities by an order dated 20.01.2015, all qualified and eligible citizens in terms of the Recruitment Rule of 2013 had acquired a fundamental right under Article 14 & 16 of the Constitution of India to participate in the selection process for the posts of newly created Technical Assistant in the State Council for Information Technology and e-Governance, Government of Arunachal Pradesh. The 7(seven) newly created posts of Technical Assistant, therefore, could not have been filled up by the Respondent Nos. 6 to 12 without providing an equal opportunity to participate in the selection process to the rest of the eligible and qualified candidates in terms of the Recruitment Rule of 2013."

24. In the case of ***State of Orissa & anr. v. Mamata Mohanty***, reported in ***(2011) 3 SCC 436***, as well; the Hon'ble Supreme Court, in paragraph No. 36 thereof, has held, as under:

"36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the notice board, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open

advertisement as to enable all eligible persons to compete on merit.”

25. In the case of ***Ali Tallang v. State of Arunachal Pradesh***, reported in **2022 (2) GLT 729**, this Court, in paragraph No. 26, thereof, has held that appointment to a public post is required to be made in accordance with the Recruitment Rule governing the post and after affording equal opportunity of participation to each of the eligible candidates.

26. The law regarding public employment, therefore, is that employment to a public post must be made in accordance with the Recruitment Rule governing the post by affording equal opportunity of participation to each of the eligible candidates in accordance with the mandate of Articles 14 and 16 of the Constitution of India.

27. Any employment made *dehors* the provision of the Articles 14 and 16 of the Constitution of India, will, therefore, be liable to be interfered with by this Court in exercise of power under Article 226 of the Constitution of India.

28. In the instant case, having found that the appointment of respondents No. 4 to 15 in the posts of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, was made by the Respondent No. 2 i.e. Director, Accounts & Treasuries, Government of Arunachal Pradesh, Itanagar, in violation of the Recruitment Rule as well as Articles 14 and 16 of the Constitution of India; the appointments of private respondents No. 4 to 15, accordingly, are liable to be interfered with by the Court on the ground of having been made not only in violation of the petitioners' fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India but of all those as well, who were eligible and qualified under the Recruitment Rule, for participation, had the selection process been undertaken by the respondent authorities for filling-up the posts of Lower Division Clerk, Upper Division Clerk, and

Upper Division Clerk-cum-Accountant, in which posts, the respondents No. 4 to 15 were appointed on a pick-and-choose basis.

29. Accordingly, orders of appointment issued by the Respondent No. 2 i.e. the Director, Accounts & Treasuries, Government of Arunachal Pradesh, Itanagar, appointing:-

- (1). Respondent No. 4 as LDC vide No. DA/TRY/53/90/Pt (I) dated 28.04.2017;
- (2). Respondent No. 5 as LDC vide No. DA/TRY/53/90/Pt (III) dated 20.06.2017;
- (3). Respondent No. 6 as LDC vide No. DA/TRY/53/90/Pt (II) dated 26.05.2017;
- (4). Respondent No. 7 as LDC vide No. DA/TRY/53/90/Pt (IV) dated 20.06.2017;
- (5). Respondent No. 8 as UDC vide No. DA/TRY/53/90/Pt (III) dated 26.05.2017;
- (6). Respondent No. 9 as UDC vide No. DA/TRY/53/90/Pt (II) dated 26.05.2017;
- (7). Respondent No. 10 as UDC vide No. DA/TRY/53/90/Pt (I) dated 28.04.2017;
- (8). Respondent No. 11 as UDC vide No. DA/TRY/53/90/Pt (IV) dated 20.06.2017;
- (9). Respondent No. 12 as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-IV) dated 20.06.2017;
- (10). Respondent No. 13 as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-III) dated 20.06.2017;
- (11). Respondent No. 14 as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-II) dated 20.06.2017; and
- (12). Respondent No. 15 was appointed as UDC-cum-Accountant vide No. DA/TRY/53/90/(Pt-I) dated 20.06.2017; are hereby set aside and quashed.

30. Consequent upon setting aside of the aforesaid orders of appointment of

respondents No. 4 to 15; the Respondents No. 4 to 15 are also found to be not entitled to work as Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, respectively, in the Department of Accounts & Treasuries, Government of Arunachal Pradesh, on the basis of any order or orders of appointment issued by the respondent authorities subsequent to the orders of the appointments of Respondents No. 4 to 15, referred to hereinabove, unless such appointments are made following the relevant Recruitment Rule as well as the constitutional scheme for making appointment to a public post.

31. Resultantly, upon setting aside the appointment orders of private respondents No. 4 to 15; the respondent authorities are hereby further directed to fill-up the aforesaid 4(four) posts, each, of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant, in accordance with the "*General Arunachal Pradesh Group 'C'(Ministerial) Common Recruitment Rules, 2008*", and any other relevant Recruitment Rule for filling-up the posts of Lower Division Clerk, Upper Division Clerk, and Upper Division Clerk-cum-Accountant in the Department of Accounts & Treasuries, Government of Arunachal Pradesh, after open advertisement for filling-up of these posts, are duly notified.

32. With the above directions, the writ petition stands allowed and accordingly stands disposed of.

JUDGE

Comparing Assistant