

GAHC010122822023



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

Case No. : WA/203/2023

COLONEL KOJ TARI
S/O LATE KOJ HANYA,
VILL.- DUTTA,
P.O. AND P.S.- ZIRO,
DIST.- LOWER SUBANSIRI, ARUNACHAL PRADESH.

VERSUS

THE STATE OF ARUNACHAL PRADESH AND 5 ORS.
REP. BY THE CHIEF SECRETARY, ITANAGAR, ARUNACHAL PRADESH.

2:THE COMMISSIONER
TO THE HON'BLE GOVERNOR
ARUNACHAL PRADESH
ITANAGAR.

3:THE SECRETARY
GOVT. OF ARUNACHAL PRADESH
DEPTT. OF ADMINISTRATIVE REFORMS

ARUNACHAL PRADESH CIVIL SECRETARIAT
BLOCK NO. 4
ITANAGAR.

4:THE JOINT SECRETARY
GOVT. OF ARUNACHAL PRADESH
DEPTT. OF ADMINISTRATIVE REFORMS. ARUNACHAL PRADESH CIVIL
SECRETARIAT
BLOCK NO. 4
ITANAGAR.

5:THE SCREENING COMMITTEE

REP. BY ITS CHAIRMAN SHRI RAMESH NEGI
IAS (RETD.) O/O ADMINISTRATIVE REFORMS. ARUNACHAL PRADESH
CIVIL SECRETARIAT
BLOCK NO. 4
ITANAGAR.

6:THE SECRETARY
TO THE ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION (APPSC)
ITANAGAR
ARUNACHAL PRADESH

Advocate for the Petitioner : MR. D MOZUMDER

Advocate for the Respondent : GA, AP

Linked Case : WA/205/2023

ROSY TABA
W/O CHAKTER GONGO

PRESENTLY RESIDING AT VIVEK VIHAR
QUARTER NO. 81
TYPE- III
P.O.- R.K. MISSION
ITANAGAR
P.S.- ITANAGAR
DIST.- PAPUMPARE
ARUNACHAL PRADESH.

VERSUS

THE STATE OF ARUNACHAL PRADESH AND 4 ORS.
THROUGH THE CHIEF SECRETARY
GOVT. OF ARUNACHAL PRADESH
ITANAGAR.

2:THE CHIEF SECRETARY
GOVT. OF ARUNACHAL PRADESH
ITANAGAR.

3:THE SECRETARY
DEPTT. OF ADMINISTRATIVE REFORMS
GOVT. OF ARUNACHAL PRADESH

ITANAGAR.
4:THE UNDER SECRETARY
DEPTT. OF ADMINISTRATIVE REFORMS
GOVT. OF ARUNACHAL PRADESH
ITANAGAR.

5:THE SCREENING COMMITTEE
CONSTITUTED VIDE ORDER DATED 11.01.2023 FOR SCREENING THE
APPLICATIONS RECEIVED FOR THE POST OF CHAIRMAN AND MEMBERS
OF ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION THROUGH ITS
CHAIRMAN
SHRI RAMESH NEGI
IAS (RETD.).

For the appellants : Mr. D. Mozumder, Senior Advocate
Assisted by Mr. B. Kaushik, Advocate
for the appellant in WA 203/2023
Mr. K.N. Choudhury, Senior Advocate
Assisted by Mr. N. Gautam, Advocate
for the appellant in WA 205/2023

For the respondents : Mr. B.D. Goswami,
Addl. A.G., Arunachal Pradesh
Assisted by Mr. A. Chandran,
Addl. Senior Govt. Advocate,
Arunachal Pradesh

– B E F O R E –

**HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA**

09-06-2023

S. Mehta, C.J.

These instant intra-Court writ appeals which arise out of a common controversy are directed against the orders dated 29.05.2023 and 08.05.2023 passed in WP(C) 223(AP)/2023 and WP(C) 213 (AP)/2023, respectively whereby the learned Single Judge denied the prayer for interim relief made by the appellants/writ petitioners in the writ petitions.

2. The appellants/writ petitioners were duly selected as Members of the Arunachal Pradesh Public Service Commission (APPSC) as a consequence of the selection process held pursuant to Advertisement dated 21.11.2022. After the selection process was completed, individual notifications dated 07.02.2023 were issued by the Government of Arunachal Pradesh, under the authority of the Governor of Arunachal Pradesh in terms of clause (1) of Article 316 of the Constitution of India read with clause 4 of the Arunachal Pradesh Public Service Commission (APPSC) Regulation, 1988, whereby the Governor of Arunachal Pradesh was pleased to appoint the appellants herein as Members of the APPSC. It was clearly indicated in the said notifications that the appellants shall hold the

office for a term of 6 (six) years from the date on which he/she enters upon the office or till he/she attains the age of 62 years, whichever, is earlier, in terms of the provisions of clause (2) of Article 316 of the Constitution of India.

3. However, it appears that before the selection, as stated above, was held, there were large scale protests in the State of Arunachal Pradesh owing to irregularities in the manner in which the erstwhile Commission conducted certain selection processes which had to be scrapped. The Members of the earlier Commission, resigned as a consequence of the large scale protests in the State, which resulted into holding of fresh selection as stated above. The swearing in ceremony of the appellants was fixed on 17.02.2023 at Darbar Hall, Raj Bhawan, Itanagar. However, the ceremony had to be cancelled because of law and order situation prevailing in the State. The Cabinet of Arunachal Pradesh took a decision on 29.03.2023 whereby the appointment of the appellants herein was cancelled/recalled. This decision was formally notified vide Notification dated 18.04.2023. A fresh advertisement was issued on 28.04.2023 for filling up the posts on which the appellants had been duly appointed. Being aggrieved of the cancellation of their appointment and the fresh advertisement for selection of Members of the APPSC, the appellants preferred WP(C) 223(AP)/2023 and WP(C) 213 (AP)/2023 before the Itanagar Bench of the

Gauhati High Court.

4. The learned Single Judge declined the prayer for interim relief to the appellants by orders dated 29.05.2023 and 08.05.2023 passed in WP(C) 223(AP)/2023 and WP(C) 213 (AP)/2023, respectively. The learned Single Judge in the order dated 08.05.2023 observed that the issue involved in the writ petition would require some deliberations. It was further observed in the said order that the process initiated pursuant to the Advertisement dated 28.04.2023 shall be subject to further order(s) that may be passed in the said writ petitions. The orders whereby the prayer for interim relief has been denied to the appellants/writ petitioners, are assailed in these instant writ appeals.

5. Mr. D. Mozumder, learned senior counsel representing the appellant in WA 203/2023 and Mr. K.N. Choudhury, learned senior counsel representing the appellant in WA 205/2023 have drawn the Court's attention to the provisions contained in Articles 316 and 317 of the Constitution of India. They urged that after following due process of law, the selections were made and the appointment orders of the appellants on the posts of Members of Public Service Commission were issued in terms of Article 316 of the Constitution of India. They contended that the only process by which, the appointments duly notified could be cancelled is by resorting to the procedure provided under Article 317 of

the Constitution of India. They urged that the scheme of the Constitution does not contemplate for withdrawal/recalling of the order of appointment. They further submitted that the observations made by the learned Single Judge that the process initiated pursuant to the Advertisement dated 28.04.2023 shall be subject to further order(s) in the writ petition, would not in any manner save the situation because in case appointments are made as a consequence of the fresh advertisement which is illegal on the face of record, third party rights will be created and again the bar of Article 317 would come into play. They thus urged that until and unless the writ petitions filed by the appellants herein challenging the recalling of their appointment are decided, the fresh process for selection deserves to be stayed. They also pointed out that the reason for recalling the appointment of the appellants, as indicated in the affidavit of the respondents, is based on the Assembly Proceedings wherein a question was raised that there had been protests and agitations by submitting a memorandum wanting that there should be constitution of a new selection committee and there should be a new selection process for appointment of Chairman and Members. In response, Hon'ble the Chief Minister gave a statement that the appointments were being cancelled. Thus, merely on the basis of a question raised in the assembly, the appointments already made on constitutional posts were cancelled. It is contended that the procedure so

adopted is alien to the scheme of the Constitution. It was further submitted that there is no aspersion whatsoever on the propriety of the selection process in which the appellants were selected and appointed as Members of the Commission and hence, the flimsy reason on which the selection has been recalled cannot stand to scrutiny.

6. Mr. B.D. Goswami, learned Additional Advocate General, Arunachal Pradesh, representing the respondents vehemently and fervently opposed the submissions advanced on behalf of the appellants. He urged that as the appellants herein had not taken oath in terms of clause 4(b) of APPSC Regulations, 1988, they could not be termed as duly appointed Members of the Commission. He thus urged that no right to hold the posts was crystallized in favour of the appellants herein so as to give them the locus to challenge the well reasoned decision of the State Government in cancelling the faulty selection process in which the appellants were selected. He further placed on record, a communication as per which the State has decided not to complete the fresh process till the end of this month. It was contended that in the meantime, the writ petitions will be decided and hence, no prejudice will be caused to the appellants.

7. We have considered the submissions advanced at Bar and have gone

through the material available on record. At the outset, we may note that the scheme of the Constitution to be specific of Article 316 clearly stipulates that the appointment of the Chairman and other Members of the State Commission, shall be made by the Governor of the State. Thus, the appointment order dated 07.02.2023 issued under authorisation of the Governor of the State, is clearly an order of appointment under Article 316(1) of the Constitution. The issue as to whether the administration of oath under clause 4(b) of the APPSC Regulations, 1988 would only crystallize and complete the process of the appointment of the Members, is yet to be adjudicated in the writ petitions pending before the learned Single Bench. Expression of opinion by this Court on this issue at this stage may prejudice the case of the respondents. However, allowing the fresh process to be continued would lead to grave complications inasmuch as, the freshly selected candidates, if any, would try to take recourse to the provisions contained in the Constitution of India for saving their selection.

It may be stated here that there is no averment on behalf of the respondent State authority that the selection process by which the appellants were selected was flawed/ tainted in any manner.

In any event, we feel that a substantial question of law is required to be adjudicated in these cases as to that whether duly selected and appointed

Member/Members of the Commission can be removed without following the procedure provided under Article 317 of the Constitution of India. Hence, we are of the firm opinion that until the writ petitions preferred by the appellants are decided, the fresh selection process cannot be allowed to continue.

8. In this view of the matter, it is hereby directed that until final disposal of the writ petitions referred to (supra), further process of selection of Members of APPSC as a consequence of the Notification dated 28.04.2023 shall remain stayed.

9. We, however, make it clear that the observations made hereinabove are restricted for the purposes of disposal of these two writ appeals and would not have any bearing on the outcome of the writ petitions.

10. The writ appeals are allowed in these terms.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant