

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(C) No.801 of 2022

1. Shri Yumnam Manaoba, aged about 26 years, s/o (L) Y.Budhichandra Singh, a resident of Bamon Leikai Thangjam Leirak, PO & PS Porompat, Imphal East District, Manipur.
 2. Shri Moirangthem Rishikanta Meitei, aged about 37 years, s/o M. Iboyaima Singh of Wangkhei Angom Leikai, Imphal East District, Manipur.
- ... Petitioners

-Versus-

1. The State of Manipur, through the Principal Secretary (Home), Government of Manipur, Imphal, Manipur 795001.
 2. The Director General of Police, Manipur, Imphal, Manipur, 795001.
- ... Respondents

**BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the petitioners:	Mr. Th. Khagemba, Advocate
For the respondents:	Mr. H. Samarjit, GA
Date of hearing:	04.12.2023 & 04.04.2024.
Date of judgment:	08.04.2024

JUDGMENT AND ORDER [CAV]

[1] The petitioners, two in numbers, filed the present writ petition praying for a direction to the respondents to hold a viva voce of the petitioners in view of the Gazette Notification dated

20.08.2005 [Annexure-A/17] for the post of Asst. Sub-Inspector of Police (Male/Civil) within a stipulated period and appoint them to the said post as both of them scored more marks than stipulated cut-off mark for written test.

[2] Heard Mr. Th. Khagemba, learned counsel for the petitioners and Mr. H. Samarjit, learned Government Advocate for the respondents.

[3] Brief facts of the case are that the Government of Manipur, vide requisition Notification dated 24.04.2010 notified for filling up the post of Sub-Inspector of Police, Jemadar for MR/IRB and Asstt Sub-Inspector of Police (Male/Civil) comprising of 243, 49 and 112 number of vacancies respectively, through direct recruitment for which the educational qualification was Graduate for SI and Jemadar and PUC or Intermediate or equivalent for ASI. The petitioners being qualified applied for the said ASI posts, but in the Notification dated 25.02.2013, the petitioners could not find their names in the list of candidates who were qualified in the written test. In Notification dated 20.08.2005 [Annexure-A17] issued by Joint Secretary (Home), Govt. of Manipur prescribing detailed procedures for physical test, written test and viva voce to the post of Asst Sub-Inspector (Civil Police)/Havildar MR, IRB, cut-off mark in written test is prescribed as '24'.

[4] Thereafter, the petitioners filed applications dated 06.03.2013 and 07.03.2013 under the RTI seeking information as to the marks obtained by them in the above written examination. The SP, DGP Control Room-cum-ASPIO, Police Department on 9.4.2013 informed the Special Secretary (Home), Govt of Manipur that the Police Department, Manipur was exempted from the purview of the RTI Act, 2005. Since the said RTI information was not furnished, they filed WP(C) No.685 of 2013 praying for quashing the above

said letter dated 9.4.2013 and to direct the respondents to produce the answer script of the petitioners. The said writ petition was disposed of on 4.10.2013 by directing the respondents to give the required information sought by the petitioners. The State filed Review Petition No.30 of 2013 for reviewing the above order, which was allowed on 13.11.2013 with a direction to furnish the marks secured in the written examination of the petitioners within one month from the date of completion/declaration of the above selection/recruitment process. The SP, DGP Control Room-cum-ASPIO, Police Department furnished to the petitioners their written exam marks on 29.03.2014 after the selection was over and declaration of the result on 03.04.2014.

[5] Thereafter, by another RTI application dated 25.04.2014 sought for inspection of the answer script of the written test for recruitment of Asst Sub-Inspector, which was not furnished to them and the petitioners again filed WP(C) No.47 of 2015. The said WP(C) No.47 of 2015 was withdrawn on 20.04.2015 as the Chief Information Commission was appointed and appropriate forum was available.

[6] In August 2016, the petitioners came to know that in one RTI reply, addressed to Shri R.K.Prabir Singh, the Special Secretary (Home), Govt of Manipur furnished the information with regard to marks tabulation of the selected candidates. The petitioners on perusal of the said marks scored by the selected candidates came to know that even a candidate who scored just 20 marks in the written examination were called for viva voce and the petitioners who scored 27 and 26 ½ marks in the written exam were not called for viva voce. The petitioners' marks in the written exam are higher than 109 selected candidates who were called for viva voce.

[7] In similar cases i.e. WP(C) No.760 of 2014 and WP(C) No.376 of 2014, the petitioners therein scored higher marks than others who were called for interview but they were not called for viva voce. That case was for SI recruitment and in that recruitment, there was no cut off marks as stated by the Addl. DGP (Prisons), Manipur, Imphal in his letter dated 1.6.2015. The said WP(C) Nos.760 of 2014 and 376 of 2014 were disposed of on 24.07.2015 with a direction to the respondents to conduct a 'special viva voce test' for the two petitioners within a period of one month, and the same was compiled by the respondents vide appointment orders dated 11.05.2016 and 30.08.2016 to the post of Sub Inspector.

[8] In WP(C) No.306 of 2019 filed by the present petitioners, this Court in para 20 observed as follows:

"While filing affidavit-in-opposition to the writ petition, the respondents No.2 and 3 stated that petitioners failed to secure qualifying marks for ASI written test i.e. 26 ½ marks was secured by the first petitioner and 27 marks by the second petitioner. The cut off for Unreserved and OBCs, in which category the petitioners applied, is 28 marks. Now the petitioners claim that the first petitioner should be given 28 ¼ marks and the second petitioner should be given 29 ½ marks. Though the respondent State contended that the claim now made by the petitioners is not supported by any material, equally, the respondent State has also failed to substantiate their case by producing documentary proof. Along with the rejoinder to the affidavit-in-opposition, the petitioners have produced the question and answer which they have obtained under RTI Act. On perusal of the same, prima facie, this Court is of the view that there is substance in the claim now made by the petitioners.

[9] The Writ Petition (C) No.306 of 2019 was disposed of by directing the respondents to re-evaluate the answers of the petitioners in the light of the order passed in WP(C) No.163 of 2009 dated 17.12.2013 and if upon such re-evaluation, the petitioners are found to have scored the cut off marks, a special viva voce test be

conducted or called for the petitioners for the post of ASI of Police by applying the ratio in WP(C) Nos.760 and 376 of 2014 decided on 24.07.2015 and 818 of 2016 dated 15.05.2017, within a period of two months from the date of receipt of the copy of the order.

[10] In the affidavit-in-opposition filed by respondent No.2, it is stated that with reference to para No.10 of the writ petition, the answering deponent submits that the petitioners' marks in the written examination is higher than those 109 selected candidates who are called for viva-voce but the selected 109 candidates belong to SC/ST candidates. Whereas the petitioners belong to OBC/Unreserved candidates whose pass marks for the written test of ASI is: unreserved and OBC- 28 marks whereas for SC & ST pass mark is 20 marks.

[11] The petitioners failed to secure the qualifying marks for ASI written test, 26½ marks was secured by Chest No.433/IE Shri Moirangthem Rishikanta and 27 marks secured by Chest No.1579/IE Shri Yumnam Manaoba.

[12] It is further stated that, with reference to para No.11 of the writ petition, the present writ petitioners were ASI candidates. However, WP(C) No.760 of 2014 is of SI Candidates and they are of different written test. It is pointed out that the present writ petitioners were ASI Candidates and WP(C) No.818 of 2016 is of SI candidates as such, they are of different written test.

[13] Mr. Th. Khagemba, learned counsel for the petitioners submits that the petitioners scored 27 and 26½ marks in the written test and as such they were eligible for appearing in the interview having scored more than the statutory cut-off mark of "24". It is pointed out that in their reply, the respondents have failed to dispute and deny the specific averment of the petitioners that as per Notification dated 20.08.2005 [Annexure-A-17], the cut-off mark for written test for ASI is '24'. It is submitted that the plea of the

respondents to the fact that the cut-off mark is '28' cannot be accepted. Learned counsel has highlighted that such plea is not sustainable without furnishing any document and also denying assertion of the petitioners that cut-off mark is 24 as per rules. He relies on the judgment in the case of **Asha v. Pt. BD Sharma University of Health Sciences: (2012) 7 SCC 389**, it was held that

17. It is a settled principle of the law of pleadings that an averment made by the appellant is expected to be specifically denied by the replying party. If there is no specific denial, then such averment is deemed to have been admitted by the respondent. In the present case, it is evident that the above noted averments in the writ petition were relevant and material to the case. In fact, the entire case of the appellant hinged on these three paragraphs of the writ petition. It was thus expected of the respondents to reply to these averments specifically, in fact to make a proper reference to the records relevant to these paragraphs. In view of the omission on the part of the respondents to refer to any relevant records and failure to specifically deny the averments made by the appellant, we are of the considered view that the appellant has been able to make out a case for interference.

[14] It is prayed that the writ petition be allowed and the respondents be directed to hold a 'special viva-voce' for the petitioners as done in similar case, as they scored more than the minimum cut-off mark stipulated by the relevant rules and appoint them as Asst. Sub-Inspectors.

[15] Mr. H. Samarjit, learned GA submits that the cut-off mark for UR and OBC is 28 marks and for SC/ST is 20 marks. As the petitioners could not reach the minimum 28 marks in the written test, they were not called for interview. It is also submitted that the decisions in the recruitment for SI cannot be relied for ASI posts. It is prayed that the writ petition be dismissed.

[16] This Court considers the materials on record and the submissions made by the parties at bar.

[17] It is the case of the petitioners that as per RTI reply and information furnished by the respondents, they scored 27 and 26½ marks in the written test for the recruitment of Asst. Sub-Inspector and as such they scored more than the cut-off marks of 24 as fixed by Notification dated 20.08.2005 [Annexure-A-17]. Accordingly, they are eligible for appearing in the interview and since they were wrongly not called for appearing in the interview, a direction is prayed for holding a 'special viva-voce' for them for the post of ASI and appoint them to the posts. On the other hand, the case of the respondents is that the cut-off for written test for UR/OBC is 28 marks and since the petitioners failed to score the minimum cut-off, they were not called for the interview.

[18] It is clear from a bare perusal of the Notification dated 20.08.2005 [Annexure-A-17] that the cut-off mark in the written test for Asst. Sub-Inspector and Havildar is "24". The respondents could not produce any document to controvert this fact and have also failed to deny the same in their reply. Accordingly, it is held that the cut-off marks for written test for the recruitment of Asst. Sub-Inspector is '24' as per relevant rules. Since the petitioners scored 27 and 26½ marks in the written test, they ought to have been included in the list of eligible candidates for appearing in the interview. Due to the lapse on part of the respondents, the petitioners' names were omitted from the list of eligible candidates for interview and their valuable right for consideration for appointment as Assistant Sub-Inspector of Police was violated.

[19] In the circumstances, the respondents are directed to hold a special viva-voce for the petitioners for the post of Assistant Sub-Inspectors notified on 24.04.2010 within a period of two months from the date of receipt of a copy of this order and to issue

necessary appointment order, if their total score in the test is more than that of the last candidate selected. Writ petition is allowed in terms of the above directions. Parties are to bear their own cost.

[20] Registry is directed to send a copy of this order to the respondent No.2, the Director General of Police, Manipur for information and necessary compliance.

JUDGE

FR/NFR

Priyojit

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