



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

Case No. : WP(C)/275/2021

1. Miss Gyamar Yana,

R/o Tabiang Village, P.O/P.S Nyapin, District-Kurung Kumey,
Arunachal Pradesh.

2. Miss Bamang Yakup

R/o Langro Village, P.O/P.S Sangram, District-Kurung Kumey,
Arunachal Pradesh.

VERSUS

1. The State of Arunachal Pradesh (Represented through Chief Secretary) Govt. of Arunachal Pradesh, Itanagar.

2. The Secretary, Department of Water Resource Department (WRD), Govt. of A.P., Civil Secretariat, P.O. Itanagar.

3. The Superintending Engineer (Coord), Water Resource Department (WRD), Chimpu Itanagar, Arunachal Pradesh.

Advocate for the Petitioners : Mr. L. Perme, K. Dubey, G. Maya, A. Perme, D. Tamut K. Posi

Advocate for the Respondents : Mr. S. Tapin, Sr. Govt. Adv.

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

JUDGMENT & ORDER (Oral)

Date : 14-06-2024

Heard Mr. L. Perme, learned counsel for the petitioners. Also heard Mr. S. Tapin, learned Senior Government Advocate for the State respondents.

2. The challenge made in this writ petition is to the Advertisement dated 20.08.2021, issued by the Superintending Engineer (Coord), Water Resource Department, Chimpur, Itanagar, inviting application for filling up of few vacant posts of Junior Engineer (Civil), Surveyor, Junior Estimator on contractual basis for a period of 6(six) months through Walk-In-Interview on consolidated salary of Rs.20,000/- (Rupees Twenty Thousand) for Junior Engineer, and Rs.15,000/- (Rupees Thousand) for Surveyor and Junior Estimator per month and also Addendum dated 24.08.2024 whereby, the actual number of posts are published as 7(seven) for Junior Engineer, 4(four) for Surveyor and 2(two) for Junior Estimator in continuation of the aforesaid Advertisement.

3. The petitioners, 2(two) in numbers, are Diploma in Civil Engineer and B. Tech. in Civil Engineer. The petitioners are eligible for selection and appointment to the post of Junior Engineer and

other posts advertised in the impugned Advertisement. The contention of the petitioners is that the department is not empowered to recruit and appoint the post of Junior Engineer, Surveyor and Junior Estimator as the recruitment of these posts has to be through the Arunachal Pradesh Public Service Commission (herein after referred to as APPSC in short) and Arunachal Pradesh Staff Selection Board (hereinafter referred to as APSSB in short). The post of Junior Engineer is a Group-B (Non-Gazetted) as per the recruitment rules and post of Surveyor and Junior Estimator are Group-C posts.

4. As per the Notification dated 04.07.2017, the Government has authorised the APPSC to conduct recruitment of all Group-B (Non-Gazetted) posts under the Government of Arunachal Pradesh. It has also done away with the practice of conducting recruitment by Appointing Authorities themselves and the conduct of recruitment of Group-B (Non-Gazetted) post shall be made through the APPSC only. It further provides that the recruitment of candidates shall be made through a written examination and personal interview conducted by the APPSC. It shall conduct the written examination at the various examination centres, either online or offline. The Commission shall frame set of examination guidelines for conducting the examination for recruitment of officials at various levels in the most transparent manner. It is contended that there exist a set of guidelines framed by the APPSC for conduct of such examination for Group-B (Non-Gazetted) post which are being conducted by the APPSC.

5. It is further contended that on the enactment of APSSB, Act, 2018, the post of Surveyor and Junior Estimator falls under the Group-C. It is the APSSB, who is the authority competent to conduct examination for appointment to such posts.

6. Mr. L. Perme, learned counsel for the petitioners while referring to the Notification dated 04.07.2017 and APSSB, Act, 2018 as well as recruitment rules regulating the recruitment and appointment of the post of Junior Engineer, Surveyor and Junior Estimator, submits that impugned Advertisement dated 20.08.2021 inviting applications for filling up the post of Junior Engineer, Surveyor and Junior Estimator is against the applicable recruitment rules, Notification and Act and Rules. He submits that the impugned Advertisement clearly indicates that the posts are to be filled up only through Walk-In-Interview on contractual basis, which shows that such a recruitment only through Walk-In-Interview would not be a transparent one. There is every likelihood of nepotism and favouritism in conducting Walk-In-Interview. Since, rules provide for written examination followed by *Viva-Voice*, the impugned Advertisement which provides only through Walk-In-Interview is against the recruitment rules holding the field.

7. Mr. L. Perme, learned counsel, submits that while referring to Rule 5 of the Recruitment Rules of 1984 and Rule 6 of the common Recruitment Rules to the post of draughtsman Grade-III, 2014 (now re-designated as Junior Estimator), submits that the same provides

for relaxation of rules. The authorities have not invoked the said rules and without invoking the provisions of relaxation of rules, no recruitment can be made.

8. Mr. S. Tapin, learned Senior Government Advocate for the State respondents, submits that due to administrative exigency and want of manpower, the authority has decided to fill up the post on contractual basis for a period of 6 (six) months on a consolidated fixed pay as the recruitment through the APPSC and APSSB takes a considerable time to complete the recruitment process. He submits that the Office Memorandum dated 17.10.1994 and 20.04.2000, clearly provides that in exceptional circumstances, where it is felt absolutely necessary on the part of the department to do so in the interest of the public service, recruitment and appointment to that posts on contractual basis is permitted. There is no bar in filling up of posts in exigency of service and for a limited period. The appointments are not made on regular basis but only for a certain period.

9. He submits that the posts are to be filled up on a contractual basis for a limited period of 6 (six) month through Walk-In-Interview, the petitioners may also apply for the same and the same yardstick will be applied to all the candidates in the interview. There is no reason to doubt that it would not be transparent. The issuance of the aforesaid advertisement itself shows the *bonafide* and transparency in the process of the appointment which is absolutely

necessary as the regular process of recruitment is taking considerable time. He also refers to letter written by Joint Secretary, RWD, Govt. of Arunachal Pradesh to the Secretary, Arunachal Pradesh APPSC as well as to the APSSB requesting to furnish the status of recruitment process against the posts which were requisitioned by the department for selection in terms of the applicable rules. However, as on date, the recruitment could not be completed and they are yet to receive response from the Commission and the Board. He submits that in the facts and circumstances, due to shortage of man power in the department, the authorities have decided to recruit and appoint the posts by way of present advertisement for a limited period on contractual basis. If the petitioners are also eligible, there is no bar for the petitioners to apply for the posts and participate in the recruitment process through Walk-In-Interview.

10. Mr. S. Tapin, the learned Senior Government Advocate has placed on reliance the following Judgments:

1. Retd. Armed Forces Medical Association and others vs. Union of India and others reported in **(2006) 11 SCC 731.**

11. Due consideration has been extended to the submissions of learned counsel for the parties.

12. The post of Junior Engineer is a Group-B (Non-Gazetted) and other two post of Surveyor and Junior Estimator are Group-C posts. Undisputably, these posts are to be filled up through APPSC and

APSSB. The process of recruitments for these posts is to be done through written examination followed by *Viva-Voice*.

13. The respondent authorities have issued the impugned Advertisement dated 20.08.2021, inviting application for filling up of the said posts for a period of 6(six) month through Walk-In-Interview on consolidated salary of Rs.20,000/- and Rs.15,000/- respectively. Vide Addendum dated 24.08.2024, the numbers of posts have been reflected as 7(seven) for Junior Engineer, 4(four) for Surveyor and 2(two) for Junior Estimator.

14. It is noticed that the Government of Arunachal Pradesh vide its Notification dated 04.07.2017 has authorised the APPSC to conduct the recruitment of Group-B (Non-Gazetted) post under Government of Arunachal Pradesh. The recruitment of candidates shall be made through written examination and personal interview conducted by APPSC.

15. On the enactment of APSSB, Act, 2018, all the posts of Group-C are to be recruited through the said Board. Section 4 of the APSSB of 2018 provides that notwithstanding anything contained in any other law for the time being in force, or rules, regulation, bye-laws framed thereunder, relating to the appointment to the service/post in, and conditions of service of employees of, the Government Departments, organisations and autonomous bodies established/constituted by the Government and Semi-Government Organisation, the Board shall be the authority competent to conduct

examinations for appointment to the sub-ordinate services/posts of such Government Departments, organisations and autonomous bodies and Semi-Government Organisations, and it shall be the duty of the Board to conduct such examinations.

16. On plain reading of the above provision, it is the APSSB, who is the competent authority to conduct examination for appointment to the posts of Group-C under the Government of Arunachal Pradesh.

17. For recruitment of all the posts of Group-B (Non-Gazetted) under the Government of Arunachal Pradesh, APPSC has been authorised to conduct and have been conducted by them.

18. Having considered above, there would not be any dispute, as regards the conduct of recruitment for the post of Junior Engineer, Surveyor and Junior Estimator by the APPSC and APSSB.

19. It is also taken note that the department has also sent the requisition for recruitment of the present posts of Junior Engineer, Surveyor and Junior Estimator to the APPSC and APSSB. Vide Letter dated 29.07.2022, the respondent authority has requested for status of recruitment, the response which is yet to be received, which indicates that the recruitment process of posts of Junior Engineer, Surveyor and Junior Estimator are yet to be completed.

20. No doubt, the authority may have a power to appoint eligible candidates to the post for a limited period on contractual basis in the interest of public service till the recruitment process is completed by

the recruiting agency; it does not give a power to recruit without following applicable recruitment rules. The Recruitment Rules, as noted above, regulating the appointment of Junior Engineer, Surveyor and Junior Estimator, provides for the written examination followed by the *Viva-Voice*. Therefore, vide impugned Advertisement dated 20.08.2021 and the Addendum dated 24.08.2021 for filling up of posts of Junior Engineer, Surveyor and Junior Estimator on contractual basis through Walk-In-Interview is not a proper process to be adopted for filling up even for a limited period on contractual basis in exigency of service.

21. In my considered view, even for filling up of post for limited duration on contractual basis in the interest of public or administrative exigency, the requirement of rules for recruitment has to be followed in letter and spirit. Since, the Advertisement dated 20.08.2021 provides only through Walk-In-Interview without any requirement of written examination followed by *Viva-Voice* as per recruitment rules, the same is not sustainable.

22. In view of what has been discussed hereinabove, I am of the considered view that Advertisement inviting filling up of said posts on contractual basis for a period of 6(six) months through Walk-In-Interview is not in accordance with the applicable recruitment rules and Notification, is not sustainable. Thus, the impugned Advertisement dated 20.08.2021, issued by the Superintending Engineer (Coord), Water Resource Department, Chimpu, Itanagar,

and Addendum dated 24.08.2024, are hereby set aside and quashed.

23. However, considering the facts of the case and observation made in the case of **Retd. Armed Forces Medical Association, (Supra)**, liberty is granted to the respondent authorities to fill up the posts, if appointment on contractual basis for a limited period is required to be made in exceptional circumstances and absolutely necessary in the interest of public service in accordance, however, by following the applicable recruitment rules.

24. Accordingly, the writ petition stands allowed and disposed of. No order as to costs.

JUDGE

Comparing Assistant