

## **Maheswar Sarma Vs Arunachal Pradesh Public Service Commission and Others**

**Court:** Gauhati High Court (Itanagar Bench)

**Date of Decision:** March 22, 2002

**Citation:** (2002) 3 GLT 90

**Hon'ble Judges:** B.B. Deb, J

**Bench:** Single Bench

**Advocate:** S.D. Dey, M. Nath, C. Bhattacharjee and T. Sen, for the Appellant; R.H. Nabam and T. Pertin, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

B.B. Deb, J.

In this petition, the petitioner challenged the legality of the circular issued by the Arunachal Pradesh Public Service

Commission (for short (APPSC) bearing NO. PSC-R/14/2000, dated 2.7.2001 for making selection for the posts of Accounts Officer/Treasury

Officer. The petitioner has been holding the post of Senior Research Assistant (SRA) being regularised with effect from 5.6.1997 having identical

pay scale of Superintendent under the Secretariat Administration, Government of Arunachal Pradesh. In the advertisement, the applications are

invited from the in-service candidates holding the post of the Inspecting Auditor, Superintendent of Accounts, Sub-Treasury Officer,

Administrative Officer and Superintendent of Secretariat/Heads of Departments having two years service in the respective grades, but the post of

Senior Research Assistant has not been included therein, as a result, the petitioner was precluded from making any application for the posts of

Accounts Officer/Treasury Officer. Hence, the petitioner sought for writ of certiorari/direction for allowing him to participate in the examination for

the aforesaid posts.

2. At the time of issuing rule vide order dated 5.10.2001, the petitioner was allowed to participate in the selection process consisting of both

written examination and viva-voce test to be conducted by the APPSC for recruitment to the posts of Accounts Officer/Treasury Officer and

accordingly, the petitioner participated in the examination, but the authority has not yet published the result.

3. The APPSC contested the case by filing counter affidavit contending, inter alia, that as per the Recruitment Rules, for the posts of Accounts

Officer/Treasury Officer, the incumbent holding the post of Senior Research Assistant is not eligible and as such the petitioner was not allowed to

participate. However, pursuant to the interim order passed by this Court, the petitioner was allowed and he participated in the examination.

4. The State Government also contested the case by filing counter affidavit. According to the State respondent, since the petitioner does not belong

to the category of the batch specified in the Recruitment Rules for the posts of Accounts Officer/Treasury Officer, his case cannot be considered.

The post of Senior Research Assistant cannot be equated with the post of Superintendent, of the Secretariat Administration for the purpose of

eligibility criteria in respect of filling up the vacancies in the posts of Accounts Officer/Treasury Officer though the pay scale of Senior Research

Assistant and the Superintendent of the Secretariat Administration have been equalised.

5. The impugned circular bearing No. PSC-R/14/2000, dated 8.6.2000 has been issued by the APPSC for filling up 8 (eight) posts of Accounts

Officer/Treasury Officer and applications were invited from the departmental candidates holding the posts of Inspecting Auditor, Superintendent of

Accounts, Sub-Treasury Officer, Administrative Officer and Superintendent of Secretariat/Heads of Departments having two years regular service

in the grade. Vide circular of even number dated 2.7.2001, the APPSC having reiterated the previous circular dated 8.6.2000 prescribed the

syllabus for holding; examination.

6. The learned counsel for the petitioner submits that in view of equalisation of pay and allowances of the incumbents holding the posts of

Superintendent and Senior Research Assistant, the petitioner earned the eligibility for the posts of Accounts Officer/Treasury Officer. The learned

counsel further submits that the nomenclature of the post of Superintendent of Civil Secretariat has been changed and redesignated as Section

Officer.

7. The learned counsel for the APPSC referred the Recruitment Rules framed by the Government in exercise of power conferred by the proviso to

Article 309 of the Constitution of India for the posts of Accounts Officer/Treasury Officer and has submitted that since the petitioner does not

belong to the category mentioned therein to become eligible for the posts of Accounts Officer/Treasury Officer, the APPSC rightly issued the

advertisement. The equation of the pay scale of the two posts, namely, the Superintendent of Secretariat Administration and Senior Research

Assistant by an administrative order cannot be equated with the eligibility criteria prescribed by the Recruitment Rules being a delegated legislation.

The related Recruitment Rules has been framed by the Governor in exercise of power under proviso to Article 309 of the Constitution of India

vide Notification No. DA/FIN/B/24/76(PT.I) , dated 14.5.1993 which is called ""The Accounts Officer/Treasury Officer (Group-B) Recruitment

Rules, 1993"". In the Schedule it appears that 25% of the posts are to be filled up by direct recruitment through competitive examination, syllabus of

which remains prescribed in the Recruitment Rules itself, 37.5% of the posts are to be filled up by promotion from amongst the Inspecting Auditor,

Superintendent of Accounts and Sub-Treasury Officer with three years regular service in the respective grades and the remaining 37.5% of the

posts are to be filled up by in-service candidates through departmental examination from amongst the Inspecting Auditor/Superintendent of

Accounts/Sub-Treasury Officer/Administrative Officer/Superintendent of Secretariat and Heads of Departments with two year regular service. The

post of Senior Research Assistant has not been included therein and as such according to my considered opinion, the APPSC committed no

wrong in issuing the circular inviting applications. In issuing the impugned circular the APPSC has followed the eligibility criteria prescribed by the

related Recruitment Rules,

8. The petitioner has never challenged the Recruitment Rules itself and so long the Recruitment Rules for the posts of Accounts Officer/Treasury

Officer subsists, the APPSC cannot deviate therefrom and rightly the APPSC refused to allow the petitioner to participate in the examination as a

departmental candidate.

9. The learned counsel for the petitioner submits that since the petitioner was allowed to participate in the examination, he acquired a right to know

the result of the examination. On perusal of the interim order it appears that the Court at the time of passing the interim order was alive of the

implication of the interim order and as such in the interim order itself it remains mentioned that the petitioner would not acquire any right by simply

participating in the process of selection. The related part of the interim order dated 5.10.2001 is reproduced below :-

It is made clear that the participation of the writ petitioner in the aforesaid selection process will not vest him any legal right and such participation

will be subject to outcome of the writ petition.

10. As has been discussed above, it is found that since the petitioner does not hold the prescribed post included in the Recruitment Rules for

appointment to the posts of Accounts Officer/Treasury Officer, he cannot be allowed to participate in the examination for the said posts. The

Recruitment Rules having the force of law being a legislative action of the Governor cannot be ignored by the APPSC at the time of issuing the

advertisement. Equation of pay scale of the two posts by an administrative order cannot be treated to be the equation of status of two posts.

Eligibility criteria for participation in a competitive examination and/or promotional avenues to the higher posts are to be judged in accordance with

the Recruitment Rules prescribed. Any administrative order making equation of pay scale of two or more posts cannot alter the eligibility criteria

prescribed by the Recruitment Rules.

11. In that view of the matter, the petitioner is lacking of the eligibility as prescribed under the Recruitment Rules for the posts of Accounts

Officer/Treasury Officer and as such the writ petition being devoid of merit liable to be and is hereby dismissed. No order as to costs.

The result of the eligible candidates, who participated in the examination (except the petitioner) may be declared by the APPSC at its convenience.