

(1994) 08 GAU CK 0005
Gauhati High Court (Kohima Bench)
Case No: Civil Rule No. 95 (K) 94

G.A. Shimray and Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision: Aug. 10, 1994

Acts Referred:

- Constitution of India, 1950 - Article 309
- Nagaland Civil Service (Class- I) Rules, 1967 - Rule 5(c)

Citation: (1995) 1 GLR 71

Hon'ble Judges: H.K. Sema, J

Bench: Single Bench

Advocate: C. Jajo, L.S. Jamir and Achung, for the Appellant; Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

H.K. Sema, J.

The present Writ petition is preferred by 6 (six) Petitioners. The six Petitioners were a candidate for the post of Extra Assistant Commissioner (EAC). Pursuant to the advertisement, the six Petitioners appeared before the Nagaland Public Service Commission (NPSC) for Viva Voce test on 14, 15, 16, 17, 18, 21, 22, 23, 24, 25 and 26th February 1994. They have opted for the posts of 10 (ten) Extra Assistant Commissioner, requisitioned. The Commission vide its notification dated 3.3.94 published the results in order of merit and recommended the candidates against their respective posts for appointment in the order of merit. In the said Notification, the Petitioners were not recommended for appointment to the posts of 10 (ten) Extra Assistant Commissioners.

2. In this writ petition, the Petitioners seeks a writ of Certiorari and prayed for quashing of:

(a) The letter No. PAR-7/87 (Pt) dated 3rd June, 1994 by P and AR Department requisitioning 10 posts of E.A.C., and further to

(b) adjudge the decision taken by the N.P.S.C, on 19.6.91 not to maintain a Reserve list as illegal and arbitrary and declare the said decision to be null and void.

And also seeks a writ of mandamus directing the Respondents:

(a) the Respondents No. 3 to prepare a Reserve list of successful candidates who are eligible for appointment to the post of E. A.C.

(b) the Respondents No. 1 and 2 to make appointments of the Petitioner and/or any other successful candidates in the reserve list on the basis of merit to the fresh ten vacancies of E.A.C. posts.

(c) the Respondent No. 1 and 2 to relax the validity period of the reserve list if the process of appointment of successful candidates in the reserve list to be appointed by the Respondent-Government takes longer than 3.9.94, i.e., beyond the period of validity of six months.

3. It is contended by Ms. C. Jajo that there is a rule called, The Nagaland Civil Service Class-I rules, 1967, (hereinafter the rules) and the examination for the recruitment to the post of Class-I services are being conducted under these rules. According to these rules, a reserve list is bound to be maintained by the Commission and subsequent vacancies are to be filled up from the reserve list. In this connection, Ms. C. Jajo particularly referred to Rule 5(e) of the rules which deals with recruitment by competitive examination. Rule 5(e) which is relevant for the purpose of disposal of this writ petition is reproduced below:

5. Recruitment by Competitive Examination : (e) The remaining list of successful candidates so published, in the Gazette : but who could not be selected due to lack of vacancies shall remain eligible for appointment against the subsequent vacancies for a further period of six months from the date of publication of such result.

4. Laying an emphasis on this Rule 5(e), Ms. C Jajo contended that the present Petitioners who are successful candidates in the test conducted by the Nagaland Public Service Commission, but who could not be appointed due to lack of vacancies are entitled to be appointed under Rule 5(e). It is further submitted by Ms. C. Jajo that according to the provision of Rule 5(c), the subsequent vacancies shall be eligible for Appointment for the successful candidates for a period of 6 (six) months from the date of publication of such result. In other words, if the subsequent vacancies had occurred during the warranty of six months of select list, the Petitioners are entitled to be appointed to subsequent vacancies.

5. A cursory reading of Rule 5(c) quoted above, it clearly posits that the remaining list of successful candidates must be published in the official gazette so as to entitle them for appointment in subsequent vacancies that may arise within a period of six

months from the date of publication of such result. In the instant case, on perusal of the notification dated 3.3.94, it transpires that no remaining list of successful candidates has been published by the Nagaland Public Service Commission. On the other hand, by Notification dated 3.3.94, the 3rd Respondent published the result of successful candidates in the order of merit and recommended for appointment in the order of merit.

6. In the merit list, so recommended for appointment by Notification dated 3.3.94, the names of the Petitioners does not figured. It also clearly appears that besides the merit list and recommendation for appointment in the order or (sic, of) merit, no remaining list of successful candidates have been published by the Nagaland Public Service Commission.

7. Ms. C. Jajo referred to the News item appearing in the Nagaland Post, Kohima of its publication on 4th July 1994 which states that the N.P.S.C. has unanimously taken a decision on 14th June 1991, that no reserve list shall be maintained when N.P.S.C. conducted examination. According to Ms. C. Jajo that the said decision taken by the NPSC was in violation of Rule 5(c) of the rules. According to Ms. C. Jajo, the said rule was framed in exercise of the power (sic) proviso to Article 309 of the Constitution of India and the NPSC is not a competent authority to change these rules for not keeping the reserve list.

8. On bare perusal of language used in Rule 5(e) of the rules, it transpires that the rule does not contemplate reserve list. The rule speaks of remaining list of successful candidates and published in the gazette. As said already that in the instant case no separate list of successful candidates has been published in the gazette and therefore, the Petitioners are not entitled to claim right of appointment on the basis of such list. On the other hand the decision taken by the N.P.S.C. on 14th June 1991 lends support from the recent decision of the Apex Court. In [Hoshiar Singh Vs. State of Haryana and Others](#), the Apex Court had deprecated the keeping of the reserve list. This is what the Apex Court has to say in paragraphs 10 of its judgment:

Where the Selection Board was required to send its recommendation for certain number of posts only but the Board made recommendations of larger number of persons than the number of posts for which requisition was sent, appointment on additional posts on the basis of such section would be legally unsustainable. Such appointment would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who became eligible for appointment would be entitled to apply for the same.

9. In the instant case, from the merit list reproduced in page 13 of the writ Petition, it appears the Petitioners are all opted for the posts of E.A.C, the number of which is sent for requisitioned was for 10 posts. From the merit list reproduced in para 13 of the writ petition, it appears the name of the Petitioners appeared in serial No. 13, 26, 29, 30, 33 and 35 of the merit list. Therefore, by no stretch of imagination the Petitioners can (sic, be) said to have qualified for the posts of 10 E.A.C. in the order of merit.

10. It may be mentioned herein that, out of 10 posts of E.A.C, 3 posts were reserved for the educationally backward classes, and the candidates appearing in the serial No. 16, 19 and 22 of the merit list have also been recommended for appointment to the post of E.A.C. from reserved quota. The Petitioners are all general candidates.

11. The Nagaland Public Service Commission has recommended for appointment to the posts of E.A.C. strictly in the order of merit upto the serial Nos. 1 to 5, 7 and 8 from the general quota and in accordance with their option. Candidate appearing in serial No. 6 being opted for Deputy Superintendent of Police, only he was recommended for appointment to the post of Dy. S.P.

12. In the result, this petition is merit less, it is accordingly dismissed. However, no order as to costs.