

GOVERNMENT OF MEGHALAYA  
PERSONNEL & ADMV. REFORMS (B) DEPARTMENT

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NO: PER(AR).17/2012/27,

Dated Shillong, the 18<sup>th</sup> July 2012.

From : Smti R.V. Suchiang, IAS,  
Commissioner & Secretary to the Govt. of Meghalaya,  
Personnel & Admv. Reforms (B) Department.

To,

Additional Chief Secretaries to the Govt. of Meghalaya.

Principal Secretaries to the Govt. of Meghalaya.

Commissioner & Secretaries to the Govt. of Meghalaya.

All Heads of Departments. — *Divisional General of Police*

Subject : Recommendation of MPSC for direct recruitment to various posts.

Sir,

I am directed to enclose herewith a copy of the Judgement of the Hon'ble Supreme Court of India dated 27.1.2012 in the SLP (Civil) No. CC.27/2012 of 2012. Before intimating the total number of vacancies to MPSC/DSC for filling up of posts through direct recruitment, you are kindly advised to ensure that the exact number of vacancies available and anticipated should be indicated to MPSC/DSC before it makes its recommendation so that the number of names to be recommended should not exceed the number of posts advertised. The number of posts indicated should be limited to the number of vacancies existing/anticipated which would be filled up within a period of 1 year from the date of recommendation, without there being any need for the validity of the recommendation by the MPSC/DSC to be extended.

This has the approval of the Competent Authority.

Yours faithfully,

*[Signature]*  
Commissioner & Secretary to the Govt. of Meghalaya,  
Personnel & Admv. Reforms (B) Department.

M. NO: PER(AR).17/2012/27-A,

Dated Shillong, the 18<sup>th</sup> July 2012.

Copy forwarded to -

1. The P.S. to the Chief Minister, Meghalaya for favour of information of the Chief Minister.
2. The P.S. to the Chief Secretary to the Govt. of Meghalaya.
3. The Chairman, MPSC, Shillong.
4. Deputy Commissioners.
5. The Secretary, MPSC, Shillong.
6. Secretaries, District Selection Committees.

By Order etc.,

*[Signature]*  
Deputy Secretary to the Govt. of Meghalaya,  
Personnel & Admv. Reforms (B) Department.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2012  
(CC 27/2012)

ARUP DAS & ORS.

Vs.

STATE OF ASSAM & ORS.

... PETITIONERS

... RESPONDENTS

J U D G M E N T

ALTAMAS KABIR, J.

1. A short but interesting question of law arises in these Special Leave Petitions, as to whether

appointments can be made in Government service beyond the number of vacancies advertised.

2. An advertisement dated 4<sup>th</sup> November, 2006, was published by the Director of Land Records and Survey, Assam, inviting applications for selection for admission in the Assam Survey and Settlement Training Institute in respect of 160 seats. About 12,000 candidates applied for the said advertised seats and a written test was conducted which was followed by a viva voce examination. The viva voce test was limited to only 560 candidates. The restriction of the viva voce test to only 560 candidates was challenged before the Gauhati High Court in W.P.(C)No.3419 of 2007, which was dismissed and Writ Appeal No.413 of 2007 preferred from the Order of the learned Single Judge was also dismissed. The Director of Land Records and Survey, Assam, published a select list of 160 candidates and sent the candidates for training.

Subsequently, the Director sent three more lists, hereinafter referred to as "the second, third and fourth lists", but the same were not approved by the Government. The Government's refusal to approve the second, third and fourth lists against the seats available, was again challenged in Writ Petition Nos. 3812 of 2010 and 2279 of 2011 on the ground that when vacancies were available, there was no bar in the same being filled up from the Select List of 560 candidates.

3. The aforesaid case sought to be made out on behalf of the Petitioners was contested by the Respondents on the ground that even if there were vacant seats available, the same could not have been filled up beyond the number of seats advertised as such action would be contrary to the law laid down by this Court relating to deviation from the contents of the advertisement.

4. The submissions made on behalf of the Writ Petitioners were rejected by the learned Single Judge upon holding that if any appointment was to be made beyond the number of seats advertised, the Director was required to publish a fresh advertisement for selecting the next batch of candidates in accordance with Rule 20 of the Rules in this regard. The learned Single Judge also observed that it was evident from the judgment and order dated 29<sup>th</sup> January, 2010 passed in W.P. (C) No.3909 of 2009, as well as the order dated 1<sup>st</sup> December, 2007 passed in Writ Appeal No.413 of 2007, that 560 candidates were called for the viva voce test for the 160 seats which had been advertised and if other candidates from the second, third and fourth lists were to be admitted, it would amount to depriving other candidates, who had not been called for the viva voce test because of the Government's decision to limit the number of candidates in the written test, of an opportunity

of being selected. Some of the candidates may have, in the meantime, acquired the eligibility to undergo such training. Relying on the decision of this Court in Union of India Vs. Ishwar Singh Khatri & Ors. [(1992) Supp.3 SCC 84] and several other judgments expressing the same view, the learned Single Judge held that filling up of vacancies over and above the number of vacancies advertised would be contrary to the provisions of Articles 14 and 16 of the Constitution. On the basis of the above, the learned Single Judge dismissed the said Writ Petitions.

5. The decision of the learned Single Judge was challenged by the Writ Petitioners in Writ Appeal No.132 of 2011 before the Division Bench of the Gauhati High Court, along with Writ Appeal No.151 of 2011, which were dismissed by the Division Bench of the Gauhati High Court by the judgment impugned herein dated 16.9.2011. Agreeing with the views

expressed by the learned Single Judge, the Division Bench dismissed the Writ Appeals against which these Special Leave Petitions have been filed.

6. Appearing in support of the Special Leave Petitions, Mr. Joydeep Gupta, learned Senior Advocate, submitted that both the learned Single Judge and the Division Bench of the High Court had proceeded on the wrong premise that despite available vacancies, selection could not be made against the seats available beyond those mentioned in the advertisement. Mr. Gupta submitted that the legal position to the contrary had been clarified by this Court in Civil Appeal No.3423 of 1996, Prem Singh & Ors. Vs. Haryana State Electricity Board & Ors. [(1996) 4 SCC 319], where the following two questions fell for consideration, namely,

- (i) Whether it was open to the Board to prepare a list of as many as 212 candidates and appoint as many as 137 out

(12)



appointments, the merit list was to be so operated that only 11 vacancies were filled up. It was further observed that the reason given for such a finding was that as the requisition was for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. The learned Judges went on to quote a passage from the decision in Madan Lal's case (supra) which is extracted hereinbelow :-

"It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11





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make appointments to posts falling vacant thereafter in exceptional circumstances only or in an emergent situation, the Director of Land Records and Survey, Assam, had not committed any illegality in publishing the second, third and fourth lists for the purpose of making appointments therefrom against the total number of known vacancies numbering 690. Mr. Gupta submitted that both the Single Judge and the Division Bench of the High Court had completely misconstrued the decision in Prem Singh's case (supra), although the same had been cited before them. Accordingly, the decisions, both of the Single Judge as well as of the Division Bench, were liable to be set aside with appropriate directions to the State Government and its authorities to take steps to fill up the total number of vacancies from the second, third and fourth lists published by the Director, Land Records and Survey, Assam.

10. Having carefully considered the submissions made on behalf of the Petitioners, we are unable to accept Mr. Gupta's submissions, since the issue raised by him is no longer res integra and has been well settled by a series of decisions of this Court after the decision in Prem Singh's case (supra). Even in Prem Singh's case, which has been strongly relied upon by Mr. Gupta, the proposition sought to be advanced by him does not find support. It is well-established that an authority cannot make any selection/appointment beyond the number of posts advertised, even if there were a larger number of posts available than those advertised. The principle behind the said decision is that if that was allowed to be done, such action would be entirely arbitrary and violative of Articles 14 and 16 of the Constitution, since other candidates who had chosen not to apply for the vacant posts which were being sought to be filled, could have also applied if they had known that the other vacancies

x

X

would also be under consideration for being filled up. In fact, in the decision rendered in Ishwar Singh Khatri's case (supra) which was referred to by the High Court, this Court while considering the preparation of panel of 1492 selected candidates as against the 654 actual vacancies notified, recorded the fact that after filling up the notified number of vacancies from the panel, no further appointments were made therefrom and instead fresh advertisement was issued for further appointment. Since a promise had been made in the minutes of the meeting of the Selection Board that the panel would be valid till all the candidates were offered appointments, this Court held that the Selection Board had taken into consideration anticipated vacancies while preparing the panel. It is on such basis that this Court had observed that it had to be concluded that the Selection Board had prepared the panels containing 1492 candidates, as against the then available vacancies, and, accordingly, the





the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake.

12. Even the decision in Prem Singh's case (supra), which had been strongly relied upon by Mr. Joydeep Gupta in support of his claim that the State had a right to deviate from the advertisement published by it, has to be considered in the light of the circumstances in which the same was made. While holding that if the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments than the number of posts, this Court went on to hold that the State could deviate from the advertisement and make



excess appointments, the relief could be moulded in such a manner so as to strike a just balance, if it is in the interest of the State and in the interest of the person seeking public employment, to the facts of such case. The facts of that case are different from the facts of the instant case, in that no extra-ordinary and/or exceptional circumstances exist in the present case requiring the filling up of the vacant seats available after filling up the 160 seats advertised. The decision in Prem Singh's case (supra) has to be read in such a context and cannot be said to be the rule, but rather the exception.

13. We, therefore, are not inclined to accept Mr. Gupta's submissions, which deal with the exception and not the rule and, accordingly, the Special Leave Petitions are dismissed. Consequently, the application filed by the Petitioner Nos.4 to 58 for



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