

(1) These 2 (two) cases involve common questions of facts and laws and, as such, the same were taken up analogously and, accordingly, these two writ petitions are hereby finally disposed of on its own merit with the following common judgment and order.

(2) In Writ petition (C) No. 162 (AP)2000, the petitioners 10 in number mentioned above sought for a direction to the State respondents/ competent authority to appoint them to the post of Junior Teacher by contending inter alia, that they were selected and their names had been placed/put in the related waiting list at sl. Nos. 9, 15, 24, 44, 22, 135, 45, 37, 21 and 66 as seen in the document marked as annexure-B to the writ petition in terms of the related select list prepared by the Selection board consequent upon the public advertisement dated 3. 11. 97 for such recruitment and appointment to the post of junior Teacher but, they have not been given appointment to the said post as per merit of the select list, however, in the month of April, May and June, 2000, the Director of School Education, Arunachal Pradesh, the 2nd respondent herein had illegally and arbitrarily appointed some candidates whose names appear below the petitioners in the related select List thus, violating the 'seriatum' of the merit list inasmuch as, the candidates namely, (1) Miss Liter Bagra, (2) Sri Jumo Padung, (3) Sri Ananta Modi, (4) Miss Yago Yaka, and (5) Sri Bajir Gamoh whose names appear at sl. Nos. 63, 87, 114, 130 and 160 have been given appointment to the post of Junior teacher. According to Mr T. Michi, the learned counsel appearing for the petitioners, the actions of the respondents-State/ competent authority while giving appointment to the candidates whose names appear below the petitioners in the merit list amounts to discrimination and the same is not tenable in the eye of law.

(3) Resisting the case of the writ petitioners, the State respondents filed counter affidavit. Mr. G. Ete, learned Govt. Advocate submitted that in Arunachal Pradesh while appointing Arunachal Pradesh Scheduled Tribe candidates to the post of Junior Teachers, the ratio of 80:20 of APST is to be followed and maintained and most of the candidates of APST do not possess the requisite qualification, of BT and B. Ed degree and, since some of the candidates namely, (a) Miss Liter Bagra, (b) Sri Jumo Padung, (c) Ananta Modi, (d) Miss Yago Yaka, (b) Shri Bajir Gamoh, (f) Miss Deyir Ete, (g) Shri Arurut Pertin and (h) Shri Rontu Tahor possessed the requisite qualification of MA, BEd and BA, BEd, they have been given appointment to the post of junior Teachers even though, their names appeared in the waiting list below some of these petitioners and, as such, there is no infirmity in making the appointment to those persons/candidates having B. T. and B. Ed degree. It is also submitted by Mr G. Ete, learned Govt Advocate that relaxation clause has been provided for those untrained candidates without B. T. /b. Ed degree/ qualification for affording opportunity for their appointment when there is no sufficient trained b. T. /b. Ed degree holder.

(4) In Writ Petition (C) No. 94 (AP), 2000, the petitioners 12 in number also sought for the same relief for their appointment to the post of Junior Teachers by contending inter alia, that they are selected candidates for appointment to the said posts and, accordingly, their names appeared at Sl. Nos. 64, 66, 105, 7, 224, 406, 101, 150, 207, 36, 158 and 16 but, the candidates namely, (1) Ms. Liter Bagra, (2) Shri Jumo Padung, (3) Shri Ananta Modi, (4) Ms Yago Yaka, (5) Shri Bajir Gamoh, (6) Ms Deyir Ete, (7) Sri Anurut pertin and (8) Shri Rontu Tahor whose names appear at Sl. Nos. 63, 87, 114, 130, 160, 111, 201 and 255 have been given appointment to the post of Junior Teachers. Supporting the case of the petitioners, Mr T. Siram, learned counsel submitted that the action of the respondents is highly discriminatory and that the petitioners are entitled for their appointment to the posts of Junior Teachers as their juniors have been given appointm

ent to such post (s).

(5) Supporting the case of the State respondents, Mr N. N. Saikia, learned advocate General assisted by Mr G. Ete, learned Govt. Advocate advanced the same arguments and took the same plea which was taken by the State respondents in the first case i. e. , W. P. (C) No. 162 (AP) of 2000.

(6) Now this Court is to see and examine as to whether the present writ petitioners in these 2 (two) cases have enforceable legal rights and, whether the State respondents had taken away the legitimate rights of the writ petitioners as guaranteed under Article 14 and 16 of the Constitution of India or not.

(7) It is an admitted position that a select/ merit list was prepared and published by the authority concerned and the petitioners as well as said 8 (eight) candidates have been duly selected and their names are included in the merit list in order of merit and the names of those 8 (eight) persons namely, (1) Ms Liter bagra, (2) Shri Jumo Padung, (3) Shri Ananta modi. (4) Ms Yago Yaka, (5) Shri B ajir gamoh, (6) Ms Deyir Ete, (7) Shri Anurut pertin and (8) Shri Rontu Tahor appeared below the names of some of the present petitioners except, the petitioner No. 6 Otok tamuk in W. P. (C) No. 94 (AP) 2000 but, those 8 persons have been given appointment to the post (s) of Junior Teachers on the ground that they possessed MA, BEd, and BA, BEd degree/qualifications.

(8) A bare perusal of the public advertisement dated 3rd November, 1997 as an Annexures 1 and 1 (a) to the writ petitions shows that for the Arunachalee candidates, the eligibility criteria for appointment to the post of Junior Teacher, in Social Studies, english etc. etc. have been prescribed and the educational qualification required for a candidate for such appointment is that the candidate must possess B. A. degree in any of 2 (two) subjects out of History, Geography, political Science and Economics at graduate level and, for non-Arunachalee candidates, they must have the educational qualification of BA, BEd. /master Degree with minimum second Class with any 2 (two) subjects out of the subjects mentioned above and, as such, for the Arunachalee candidates, they do not require to possess the B. Ed or Master Degree with minimum second class in the related subjects and, as they are eligible, they have been selected and their names had been placed in the related merit list but, those 8 (eight) candidates who possessed B. Ed, or M. Ed degree and whose names appear below some of the petitioners of these 2 (two) writ petitions have been given appointment on the ground that preference has been given to them because of advanced educational qualification which according to me, the action of the respondents/authority concerned in affording such appointment to the candidates whose names appear below some of the petitioners is not tenable in the eye of law and the same is highly discriminatory in view of the related decisions of the Apex Court as well as this Court.

(9) It is well settled, that a selected candidate whose name finds in the select list cannot claim for appointment as of right to a post unless the relevant recruitment rules so indicates, and the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that State has the licence of acting in an arbitrary manner and the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test, and no discrimination can be permitted. In this regard, a reference can be made to a decision of a Constitutional Bench of the Apex Court rendered in Shankarsan Dash, appellant-vs-Union of India, respondent reported in (1991) 3 SCC 47 and, also other decisions reported in (1993) 1 SCC 154, (1974) 3 SCC 220, (1986) 4 SCC 268 and (1985) 1 SCC 122.

(10) In U. P. State Mineral Development corporation Ltd. and another, appellants-Vs-Vijay Kumar Upadhyay and another, respondents reported in (1997) 9 SCC 334, the Apex Court held that similarly placed persons are entitled to the same benefits despite practical difficulties on the part of the authority concerned in g

grant of benefits i. e. , regularisation of services. In another case between U. P. State Road Transport Corpn. , and another, appellants-Vs-Gobardhan and another, respondents reported in (1996) 10 scc 703, the Apex Court held thus:

\. . . . Though we find force in the contention of Shri Pradeep Misra that the candidates have no right to the post since they are in the waitlist, since the Corporation has already appointed some of the juniors who are in the waiting list , necessarily, before following that procedure, they should have given intimation to those candidates who were placed in the waiting list; if even then they do not turn up, then it could be taken that they have waived the right of appointment. But in this case, it might be that a candidate who was in the waiting list was under the expectation that he would get an order of appointment from the Corporation as and when the vacancy arises and may be he could not read the newspaper, though published. Under these circumstances, we think that after the cancellation of the wait list procedure, though no one has a right those who were on the wait list need to be considered in accordance with the rules in view of the fact that their juniors had got appointment and were even regularised. Therefore, the appellants are directed to consider the case of the respondent as a special case and make appointment according to the procedure. \

(11) In the instant cases also, the State respondents/competent authority afforded appointment to junior to the post (s) of Junior teachers ignoring the case of the petitioners except the petitioner No. 6 Ms Otok Tamuk in W. P. (C) No. 94 (AP) 2000. The State respondents also could not controvert the fact that the junior candidates like, the said 8 (eight) persons namely, Ms Liter Bagra and 7 others have been given appointment to the posts of junior Teachers instead of giving appointment to the senior candidates like, the writ petitioners concerned.

(12) For the reasons, observations and discussions made above, I am of the view that the State respondents/competent authority had acted arbitrarily while affording appointment to junior candidates mentioned above and, there is no bona-fide reason for appointing them thus, ignoring the case of the present writ petitioners except the petitioner No. 6 namely, Ms Otok Tamuk in W. P. (C) No. 94 (AP) 2000. I made this observation keeping in view of the related decisions of the Apex court mentioned above as well as the decision of this Court rendered in Jeninder Marak and ors. , petitioners-Vs-State of Meghalaya and ors. , respondents reported in (2001) 1 GLR 480.

(13) In view of the above position, I direct the State respondents/competent authority to afford appointment to the petitioners herein in the posts of Junior Teachers (TIT) except the petitioner No. 6 Ms. Otok Tamuk in w. P. (C) No. 94 (AP) 2000 by maintaining the said select/merit list within a period of one month from the date of receipt of this judgment and order.

(14) The writ petitioners may obtain a certified copy of this order and submit the same to the appropriate authority for doing the needful in the matter in terms of this judgment and order. These 2 (two) writ petitions are accordingly disposed of but, no order as to costs.