

THE HIGH COURT OF MEGHALAYA

WA No. 32 of 2013

Smti Swarnali Basumatary, d/o Sri Kapin Chandra Boro,
r/o Maidan Laban, Shillong-793004, District – East Khasi
Hills, Meghalaya.

..... Writ Petitioner/Appellant

-Versus-

1. The State of Meghalaya, through the Principal
Secretary to the Govt. of Meghalaya, Personnel
Department, Meghalaya Secretariat, Shillong.

2. Meghalaya Public Service Commission, Shillong,
through its Secretary.

3. Chairperson, Meghalaya Public Service Commission,
Shillong.

4. Controller of Examinations, Meghalaya Public Service
Commission, Shillong.

5. Sri Nipon Hajong, Selected candidate at serial No. 50 in
the select list dated 07.09.2010.

6. Smti Florina Boro, Selected candidate at serial No. 72
in the select list dated 07.09.2010.

7. Sri Raja Brahma, Selected candidate at serial No. 73 in
the select list dated 07.09.2010.

8. Sri Kapil Koch, Selected candidate at serial No. 74 in
the select list dated 07.09.2010.

..... Respondents

Shri AR Medhi, Advocate, present for the writ
petitioner/appellant.

Shri KS Kynjing, Advocate General, assisted by Shri K
Khan, Addl. Sr.GA, present for the State respondents.

Date of hearing 30th May, 2014

Date of Judgment and Order 30th May, 2014.

HON'BLE THE CHIEF JUSTICE
and HON'BLE MR JUSTICE SR SEN

JUDGMENT AND ORDER

Oral : Hon'ble Chief Justice, Prafulla C Pant.

This writ appeal is directed against the judgment and order dated 01.03.2013 passed by the learned Single Judge in WP(C)No. 291(SH) 2010, whereby said Court has dismissed the writ petition filed by the writ petitioner/appellant.

2. Heard learned counsel for the parties and perused papers on records.

3. Brief facts of the case are that the Meghalaya Public Service Commission (for short MPSC) advertised 74 posts of Meghalaya Civil Service (MCS) and Meghalaya Police Service (MPS) for which Preliminary Examination was held in the year 2008. The writ petitioner/appellant Smti Swarnali Basumatary was one of the candidates who belonged to Bodo-Kachari community. According to the writ petitioner/appellant, 5% of the posts were reserved

for 'Other Tribes' including Bodo-Kachari community. As such in all four posts out of 74 posts were reserved for other tribes within (OT) category. The writ petitioner/appellant cleared the MCS and MPS (Preliminary) Examination, 2008 which was held on 26.07.2008. Thereafter, she cleared the MCS and MPS (Mains) Examination, 2009 and was called for interview on 30.07.2010. However, after the interviews were over, the name of the writ petitioner/appellant did not find place in the list of successful candidates. Those who were selected in the category of "Other Tribes" were Shri Nipon Hajong, (who secured 1229 marks), Smti Florina Boro, (who secured 1078 marks), Shri Raja Brahma, (who secured 1013 marks) and Shri Kapil Koch, (who secured 977 marks). The writ petitioner/appellant appears to have secured only 976 marks i.e. one mark less to the last selected candidate.

4. The case of the present writ petitioner/appellant is that respondent No. 5 Nipon Hajong who secured 1229 marks was involved in a Wild Life (Protection) Act case, as such he was wrongly declared successful and he should not have been issued appointment letter.

5. In reply to this, the case of the respondents is that the Wild Life Protection Act case is not a case of moral turpitude. Apart from this, it is pleaded on behalf of the respondents that in the case in which respondent No. 5 Nipon Hajong said to have been involved, after investigation, final report was submitted. In other words, no charge-sheet was filed, as no offence was found to have been committed by him.

6. Learned counsel for the writ petitioner/appellant drew attention of this Court to the case of ***State of West Bengal vs. Sk Nazrul Islam, (2011) 10 SCC 184*** and argued that the issuance of appointment letter to Nipon Hajong is illegal. We have carefully gone through the said case law. The facts of the case referred are different to the facts of the present case. In the case of ***State of West Bengal vs. Sk Nazrul Islam*** (supra), the writ petitioner was a candidate for the post of Police Constable who had concealed the fact in the Application regarding his arrest, and the case pending against him. In said case, the writ petitioner was involved in a theft case in which after investigation, charge-sheet was filed before the Court of Addl. Chief Judicial

Magistrate, Uluberia, Howrah, and he was granted bail after he surrendered. In the present case, there is nothing on record to show that any charge-sheet was ever filed against respondent No. 5 Nipon Hajong, as such, we are of the view that the case relied on behalf of the appellant is of little help in the present case.

7. In the above circumstances, having considered the submissions of the learned counsel for the parties and after going through the impugned judgment and order dated 01.03.2013, we do not find any illegality in the order challenged before us. Rather, we agree with the view taken by the learned single Judge in the matter.

8. Therefore, this writ appeal is dismissed. No order as to costs.

JUDGE
(Hon'ble Mr Justice SR Sen)

(Prafulla C Pant)
CHIEF JUSTICE

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30.05.2014