



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 597/2018

1:SMTI OSI KOPAK
RESIDENT OF PANGIN, PO/PS PANGIN, SIANG DIST. AP. MOBILE NO.
8414012127

VERSUS

1:THE STATE OF A.P. and 5 Ors.
THROUGH THE SECRETARY DISTRICT ADMINISTRATION, GOVT. OF A.P.,
ITANAGAR.

2:THE SECRETARY
DISTRICT ADMINISTRATION
GOVT. OF AP
ITANAGAR.

3:THE DEPUTY COMMISSIONER
SIANG DIST. GOVT. OF AP.

4:THE SELECTION BOARD CONSTITUTED
FOR CONDUCTING RECRUITMENT FOR ONE POST OF LOWER DIVISION
CLERK UNDER THE ESTABLISHMENT OF THE DEPUTY COMMISSIONER
SIANG DIST. THROUGH ITS CHAIRMAN THE ADDITIONAL DEPUTY
COMMISSIONER
SIANG DIST. AP.

5:THE ASSISTANT PUBLIC INFORMATION OFFICER
OFFICE OF THE DEPUTY COMMISSIONER
SIANG DIST. AP.

6:SHRI GAGAM MOYONG
PRESENTLY SERVING AS LOWER DIVISION CLERK IN THE
ESTABLISHMENT OF THE DEPUTY COMMISSIONER
SIANG DIST. GOVT. OF AP
PANGIN
PO/PS PANGIN
AP

**By Advocates:**

For the Petitioner: Mr. D. Panging
Mr. T. Tamuk
Mr. V. Jamoh
Ms. D. Tamuk
Mr. M. Doji
Ms. M. Gibi
Ms. G. Basar
Mr. O. Tayeng
Mr. Marge D.

For the Respondents: Mr. S. Tapin, Sr.Govt.Adv. R-1 to 5
Mr. Muk Pertin, Sr. Adv. R-6
Mr. K. Dabi
Mr. D. Tatak
Mr. R. Riba
Mr. Mukbom Pertin
W. Yiang
T. Tallang

- B E F O R E -

HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

23.05.2022

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Government Advocate appearing on behalf of the Respondent Nos. 1 to 5 and Mr. Muk Pertin, learned senior counsel assisted by Mr. K. Dabi, learned counsel for the Respondent No. 6.

2. The instant writ petition has been filed challenging the order No. SD/ESTT(Appt)-01/2016-17, dated 02.12.2016, issued by the Deputy Commissioner, Siang District whereby the private Respondent No. 6 was appointed as Lower Division Clerk (LDC) under the establishment of the



Deputy Commissioner, Siang District and for a direction to the respondent authorities to appoint the petitioner as the Lower Division Clerk (LDC) under the establishment of the Deputy Commissioner, Siang District as per her merit position in the selection process conducted for appointment for the post of Lower Division Clerk (LDC) in terms of the advertisement dated 25.08.2016.

3. The case of the petitioner, in brief, is that an advertisement was issued by the Deputy Commissioner, Siang District inviting interested citizen of India for filling up of various post(s) of Group-C, for APST candidates, under the Department of the Deputy Commissioner, Siang District. For the purpose of the instant writ petition, the post(s) of Lower Division Clerk (LDC) is relevant. In terms of the said advertisement, the educational qualification was Class-XII pass with Diploma in Computer Application and only the APST candidate could apply. It was mentioned that the eligible candidate will have to appear in the written test in the following subjects namely, General English, General Knowledge, Elementary Mathematics and Viva-voce. While the aforementioned subjects i.e. the General English, General Knowledge and Elementary Mathematics had carried 100 marks each, 50 marks was earmarked for Viva-voce. The mode of selection for the recruitment was also stipulated in the advertisement. The petitioner along with 4 (four) other candidates duly applied for the post of Lower Division Clerk (LDC).

4. In pursuance to the said selection process, an order was passed on 02.12.2016, (herein after referred to as "the impugned order"), whereby the Respondent No. 6 was appointed to the post of Lower Division Clerk (LDC) in the Pay Scale PB-1 Rs 5200-20200+Grade Pay Rs 2400/- P.M. plus other allowances as admissible to the State Government employees from time to time from the date of his/her joining.



5. The petitioner, in the meantime, filed an application under Right to Information Act, 2005 on 18.11.2016 seeking information as regards the marks obtained by the candidates as well as also for the answer sheets. On 07.02.2017, the Public Information Officer of the Office of the Deputy Commissioner, Siang District provided the information as regards the marks obtained by each of the candidates. Relevant herein to mention that in the said information so provided, it was shown that the petitioner obtained 232.46 marks whereas the Respondent No. 6 obtained 235.74 marks. It was further mentioned in the said information that the answer scripts of the qualified candidates of the viva voce and the call letter for the viva voce could not be furnished as the said documents were not submitted by the concerned branch dealing with the matter.

6. The petitioner, thereafter, filed another application on 08.02.2017 calling for all the answer scripts of the petitioner from the General Administration, Siang District. On 08.03.2017, the Public Information Officer of the Office of the Deputy Commissioner, Siang District informed the petitioner that the answer scripts of the petitioner in the written examination cannot be furnished as the said information have not been submitted by the competent authority dealing with the matter. Thereafter, the petitioner again sought for information from DC's Office, Pangin and it was only on 10.10.2018, the EAC-cum-PIO of the DC's Office, Pangin provided the answer sheets to the petitioner. From the said answer sheet so provided to the petitioner, it revealed that the petitioner obtained 282 marks in the written test out of 300 marks and 16 marks out of 50 marks earmarked for the viva voce whereas the Respondent No. 6 obtained 202 marks out of 300 marks in the written test and 26.3 marks in the viva voce against the earmarked 50 marks. Accordingly, the petitioner received a total



mark of 298 marks whereas, the Respondent No. 6 had received 228.3 marks.

7. The petitioner on coming to learn about the same submitted a representation to the Office of the Deputy Commissioner, Siang District to re-examine the total marks scored in the written and viva voce as early as possible to deliver justice. However, as nothing was done from the end of the respondent authorities more particularly, the Respondent No. 3, the petitioner has approached this Court under Article 226 of the Constitution of India.

8. This Court by an order, dated 28.11.2019, issued notice, returnable by 4 (four) weeks and it was further observed that the appointment of the private respondent i.e. the Respondent No. 6 shall be subject to the outcome of the writ petition.

9. The record reveals that no affidavits have been filed by the respondents. However, Mr. S. Tapin, learned Senior Government Advocate appearing on behalf of the Respondent Nos. 1 to 5 submits that he filed the affidavit-in-opposition on 17.08.2021. He submits that the said affidavit-in-opposition have been filed on the basis of parawise reply received from the Deputy Commissioner, Siang District on 29.11.2019. A copy of the said parawise reply received from the Deputy Commissioner was also produced before this Court by the learned Senior Government Advocate. The said parawise reply to the writ petition as produced by the Respondent No. 3 is kept of record and marked with the letter 'X'. The learned Senior Government Advocate also provided a copy of the affidavit-in-opposition which was filed before this Court. I have perused both the parawise reply as well as the affidavit-in-opposition. The said parawise reply as well as the affidavit-in-opposition duly admits the stand taken by the petitioner and



further mentioned that some procedural lapses might have happened constitutionally in selection process.

10. The counsel for the Respondent No. 6 also submits that the respondent No. 6 has also filed an affidavit-in-opposition on 22.12.2021 and the copy of the said affidavit-in-opposition so filed was placed before this Court during the course of the hearing. The Registry is directed to verify the filing of the affidavit-in-oppositions by the Respondents No. 1 to 5 & Respondent No. 6 respectively and if it is available, to make it a part of the records.

11. A perusal of the affidavit-in-opposition filed by the Respondent No. 6 shows that the Respondent No. 6 prior to his appointment as an LDC in the Siang District was serving as an LDC-cum-Computer Operator in the Office of the Deputy Commissioner, Pasighat in Skilled Contingency as well as part time job as English Compere in AIR Pasighat. The Respondent No. 6 had tendered resignation from the post of LDC-cum-Computer Operator and English Compere and joined in the post of the LDC and since then, the Respondent No. 6 is serving in the post of LDC and posted in the Office of the Deputy Commissioner, Boleng, District Siang. It has been further mentioned that the Respondent No. 6 was also awarded the Certificate of Appreciation in recognition of the superior performance in running the Department by the Deputy Commissioner and the Respondent No. 6 for the last 5 years have been serving in the post of LDC to the outmost satisfaction of the controlling authority. Further to that it was mentioned that the State of Arunachal Pradesh vide DND-13/2014, dated 09.03.2017, have sanctioned of 48 posts for the Siang District inclusive of 8 (eight) post of LDC. However, the same has not been conducted and till date, the same are vacant. Admitting that the recording of the marks to the petitioner vis-



à-vis the Respondent No. 6 and the consequent appointment to be a irregular, it was further stated that the Respondent No. 6 had no role in the said selection process and any interference to the appointment order of the Respondent No. 6 would impinge upon the economic security and would adversely affect the life and career of the Respondent No. 6.

12. I have heard the learned counsel for the parties and have given my anxious consideration in the matter. From the material on record, it is apparent that the petitioner ought to have been appointed to the post of LDC on the basis of the marks secured by the petitioner as the marks obtained by the petitioner on merit far exceeds that of the Respondent No. 6. The affidavit-in-opposition filed by the Respondent No. 3 as well as the para-wise reply which is placed on record by the learned counsel appearing on behalf of the respondent nos. 1 to 5 do not disclose any reason as to why the petitioner should not be appointed in spite of securing more marks than the Respondent No. 6. Consequently, this Court therefore, is of the opinion that not considering the case of the petitioner for appointment even after scoring higher marks than the Respondent No. 6 is on the face of it illegal, arbitrary and unreasonable for which this Court, therefore, interferes with the impugned order of appointment, dated 02.12.2016, (Annexure-6 to the petition).

13. This Court further taking into consideration that the respondent authorities have not been able to show as to why the petitioner should not been appointed in spite of securing higher marks, directs the respondent authorities to consider the case of the petitioner for appointment to the post of the LDC which now stands vacant in view of the setting aside the impugned order of appointment of the Respondent No. 6, as admittedly the petitioner had secured higher marks than Respondent No. 6. The same



should be done within a period 45 days from the date a certified copy of this order is served upon the Respondent No. 3.

14. Before parting with the record, taking into consideration the submission made by the learned senior counsel on behalf of the Respondent No. 6 and further taking into consideration that there are 3 (three) post(s) vacant as would appear from the communication issued by the Office of the Deputy Commissioner, Siang District to the Senior Government Advocate, dated 02.04.2022, it is observed that when the respondent authorities initiate recruitment process for the said posts of the LDCs, the Respondent No. 6 case may considered sympathetically and if so necessary by relaxing the age.

15. With the above direction and observations, the instant petition stands disposed of.

JUDGE

Comparing Assistant