

---

**(2006) 06 GAU CK 0045**  
**In the Gauhati High Court**

Dr. Arun Deka and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

---

**Date of Decision :** 09-06-2006

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2007) 1 GLR 728 : (2006) 3 GLT 107

**Hon'ble Judges :** B.K. Sharma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

B.K. Sharma, J.—All the writ petitions pertain to the challenge made to the select list for appointment to the post of Demonstrator/Registrar/Resident Physician, etc., in the three Medical Colleges of the State under the health & Family Welfare (B) Department. As agreed to by the learned Counsel for the parties, they have been heard together and are being decided by this common judgment and order.

2. The basic thrust made in all the writ petitions is about the alleged illegality committed by the Assam Public Service Commission (APSC) in conducting the selection and the publication of the select list pursuant to the same. The writ petitions are based on more or less the same theme, except the writ petition being WP(C) No. 1916/2006 in which the petitioner has made a claim that the quota, earmarked for ST(H) candidates having not been utilized in spite of the fact that the petitioner has been selected for appointment as ST(H) candidates is being deprived of the benefit of said quota.

3. It will be pertinent to mention here that in some of the writ petitions, interim orders have been passed not to make any appointment pursuant to the select list in question. On the returnable date, so fixed in the orders, the official respondents and some of the private respondents, being represented by their respective learned Counsel opposed the admission of the writ petitions and it was on that basis the matter has been heard for which the learned Standing Counsel,

APSC has also produced the records.

4. The select list in question pertains to the posts of 23 (twenty-three) benches which are Demonstrator of Anatomy; Demonstrator of Physiology; Demonstrator of Pharmacology; Registrar of Medicine; Registrar of Nephrology; Demonstrator/Res. Pathologist/Clinical Pathologist; Demonstrator of SPM; Registrar of Neuro Surgery; Demonstrator of Bio Chemistry; Registrar of ENT; Registrar of Dermatology; Demonstrator of F&SM; Registrar; Demonstrator of Microbiology; Registrar/Res. Physician Resident/Surgeon of Surgery; Registrar of Orthopaedics; Registrar of Cardio Thoracic; Registrar of Neurology; Registrar of Gastroenterology; Registrar of Psychiatry; Registrar of Rebractionist of Ophthalmology and Registrar of Paediatric Surgery.

5. Although by the interim order, this court provided for stay of the entire select list, but during the course of hearing/learned Counsel for the petitioners submitted that the present batch of writ petitions are concerned with only 21 branches of posts and, thus so far as the other posts pertaining to the rest 11 branches are concerned, there is no challenge to the same.

6. The petitioners, who also appeared in the selection either have not been selected or although have been selected, but their merit positions in the select list are not within the zone of consideration for appointment. Thus here is a case in which, although the petitioners appeared in the selection, but have questioned the same on ground of wrong procedure and methodology of selection as well as on ground of ignoring merit and experience, being guided by extraneous considerations. Be it stated here that although the writ petitioners have stated that they were not satisfied with the manner in which the interview was conducted and have described the same to be so called interview, but none of the petitioners made any grievance against the same by submitting any representation pointing out the alleged illegalities and irregularities purportedly committed by the Selection Committee and for that matter the APSC. It is only after, publication of the select list and when their positions in the select list are not advantageous to them, they have invoked the writ jurisdiction of this court making a challenge to the same.

7. The basic grounds on which the challenge has been made as could be gathered on a total reading of the writ petitions are as follows.

(I) The Selection Committees did not put questions relating to the subject but they asked few irrelevant and out of context questions and the interview for each candidate was over within few minutes. The experts, who intact were the best persons to judge caliber, competence and professional proficiency of the candidates were not even asked to put questions and they were simply given a plain sheet of paper and a pencil to award marks and/or to grade the candidates.

(II) Some of the candidates placed above the petitioners lack experience in the particular branch and they are also lesser qualifies than the petitioners.

(III) No written examination having been held and the selection being based only oral interview, there was scope for arbitrariness and manipulation. Having regard to the number of candidates, the APSC ought to have held written examination, and confining the selection only oral interview, the APSC favoured the blue eyed candidates on the strength of political and monitory power and that there was maneouvring of the APSC members.

(IV) Some of the selected candidates are related to some Ministers of the State. For example. Dr. Lipee Nath is the daughter-in-law of the cabinet Minister Sri Rameswar Dhanowar; Dr. Dipu Bhuyan is the brother-in-law of the Chief Minister of the State, Dr. Putul Mahanta is a close relative of a cabinet Minister, Dr. Zakira Ahmed is the daughter of a district Congress President, Dr. Mrinal Bhuyan is a close relative of Sri Bhubaneswar Kalita, President of the Assam Pradesh Congress Committee, etc. According to the petitioners the instances given are only illustrative and not exhaustive. According to the petitioners the entire selection was not on merit but on extraneous considerations.

(V) Although in the advertisement it was specifically stated that "preference will be given to the candidates having PG degree in the concerned discipline", same was not adhered to and was given a good bye in making the selection. Candidates with PG degree have been superseded by candidates only with simple MBBS degree.

(VI) As requirement of Rule 43 of the APSC (Procedure and Conduct of Business) Rules, 1986, after publication of the results, a copy of the same is to be placed in the Notice Board. A copy of the same shall also be sent to the press/newspapers with a request to publish the same. However, the APSC violated the said rule inasmuch as till filing of the writ petitions the results were not published in the newspapers. Even after the directions as contained in the interim order, the results have not been published in the newspapers. Thus, the petitioners find fault in not publishing the results.

8. Apart from the above grounds, with the production of records by the learned Standing Counsel, APSC, learned Counsel for the petitioners also argued on the modality and methodology adopted in conducting the interview. However, on being pointed out that contrary to the stand of the petitioners, the mark sheets have revealed that the experts also awarded marks/grades in the printed form and not on plain sheet of paper and not by pencil, learned Counsel for the petitioners have abandoned that ground. However, they argued in reference to the provisions of the aforesaid Rules of 1986 that the procedure envisaged in the rules was not followed in conducting the interview. In this connection, they have referred to Rules 19, 23, 26, 43, 46 and 48 of the Rules of 1986.

9. Although, no counter affidavit has been filed by the respondents but the learned Standing Counsel, APSC, made his submissions on the basis of the records produced by him. Similarly, the learned Additional Advocate General, Assam also argued on the basis of the allegations made in the writ petitions by

contending that on the face of such allegations, the petitioners have not been able to make out any case requiring interference of this court under Article 226 of the Constitution of India. Likewise the learned Counsel appearing for the private respondents, some of whom have filed applications for vacating the interim order, made their submissions on the basis of the individual case and also taking the plea that there is no allegation against the selection of those private respondents.

10. I have heard the learned Counsel for the petitioners led by Mr. N. Dutta, as well as Mr. A.K. Goswami, learned senior counsel. I have also heard the learned Counsel representing the private respondents led by Mr. A.K. Bhattacharyya, learned senior counsel. I have also heard Mr. K.N. Choudhury, learned senior counsel and Additional Advocate General, Assam. Mr. T. Chutia, learned Standing Counsel, APSC has made submissions on behalf of the APSC.

11. All the petitioners appeared in the selection/interview and did not raise any grievance against the same till publication of the results by the APSC and when they found that their positions in the select list are less favourable for appointments they filed the writ petitions taking the aforesaid pleas. If the petitioners were aggrieved by the manner and method of conducting the selection, they would have at least submitted representation making a grievance against the same, which they admittedly did not do. Only statement made in the writ petition is that when they spoke about the same to their superiors, the said superiors tried to provide them some solace that things would ultimately work out perfectly in their favour. The petitioners have not indicated as to who are the said superiors. If the statement is taken on its face value, then also one thing is certain that the petitioners were not really aggrieved against the manner and method of conducting the interview but they only expressed their apprehension before their superiors and had the assurance and/or solace provided to them been materialized, their names being within the zone of consideration in the select list, there would not have been any occasion for them to make the kind of allegation as has been made in the writ petitions.

12. In view of the above, the petitioners are estopped from making the kind of allegations in respect of conducting the selection. They cannot take recourse to such allegations and that too vague, indefinite and devoid of any material particulars. They having appeared in the interview, without raising any grievance and protest and thereafter also having not raised any objection to the same, are precluded from making the kind of allegation as has been made in the writ petitions. They appeared in the selection by way of taking a chance for favourable consideration and have now turned round the same so as to question the validity of the same. They are estopped in law from doing so. In the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, the Apex Court has observed, thus.

9. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said

interview and who ultimately finds himself to be unsuccessful?.

Same view has been expressed in the case of Suneeta Aggarwal Vs. State of Haryana and Others,

13. Same is the case in respect of the allegations made that the APSC ought to have held written examination, which according to the petitioner would have removed arbitrariness and extraneous consideration. If the petitioners were keen to sit in written examination, they ought to have agitated the same before the selection by way of interview was conducted. Instead they appeared in the interview by way of taking a chance for favourable consideration and now after finding their positions in the merit list are not within the zone of consideration for appointment, such a plea has been raised, which otherwise could not have been there had their position, in the merit list been according to their choice.

14. As regards the allegation that the interview was not conducted in a proper manner and irrelevant questions were put and that the experts were not asked to put any question, same is to be mentioned, only to reject. A constitutional body like APSC is supposed to conduct selection/interview strictly following the principle underlying the same. Unless the contrary is proved, the normal presumption is that the interview has been conducted applying those principles. Apart from the member of the APSC, the expert also constituted the Selection Committee. Contrary to the plea of the petitioner, that the experts were not asked to put questions, the records have revealed that the experts gave their own marks/gradings to each of the candidates and the same was taken into consideration towards preparing the final mark sheets and eventual selection. The printed forms containing the marks of the experts have been signed by the experts. Thus, the allegation of the petitioners, too vague, indefinite and without any material particulars cannot be accepted, and that too in writ jurisdiction.

15. As regards that allegation that although some of the petitioners are better qualified and in view of the preference clause in the advertisement, preference ought to have been given to the candidates having PG degree in the concerned discipline, on a reference to the advertisement, it is seen that the educational qualification prescribed to be eligible for offering candidature was MBBS degree and registration under the Assam Medical Council. There is no dispute that the petitioner, the private respondents and all the selected candidates have the minimum requisite qualification to apply for the posts. The preference clause does not mean that irrespective of basic eligibility of the candidates, a candidate having PG degree in the concerned discipline will have to be preferred over the candidate having MBBS degree, even if he scores a margin over the PG degree holder, by performing well in the selection/interview. The question of preference will come only when merits are equal between two candidates.

16. In the above context, dealing with the question of preference, I may refer to the decision of the Apex Court as reported in (2000) 5 SCC 341 (Secretary, AP

Public Service Commission v. Y.V.V.R. Srinivasulu and Ors. Wherein it has been pointed that the suitability and all round merit cannot be overridden merely because a particular candidate is in possession of an additional qualification of the basis of which, a preference has also been envisaged. Interpreting the term ? preference?, the Apex Court has held that, the preference envisaged in the rules, under the scheme of things and contextually also cannot mean, an absolute enblock preference akin to reservation or separate and distinct method of selection for them alone. Preference, in the context of all such competitive scheme of selection would only mean that, other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred.

17. Now let us deal with the allegations that near relatives of some Ministers and politicians have been selected although they are less meritorious than the petitioners. First of all, there cannot be any bar for the relatives or even the close relatives of the Ministers and/or politicians and/or any high dignitaries to appear in any selection. To brand them as a class in the matter of selection with the pre-supposition of undue preference to them in the matter of selection will land to violation of Articles 14 and 16 of the Constitution of India. Merely because some of the selected candidates are the relations of the Ministers and politicians, that by itself cannot lead to the inference and that too the kind of inference required to draw in the matter of selection exercising the power to judicial review under Article 226 of the Constitution of India so as to conclusively hold that the selection is vitiated in view of their selection. Except indicating that the said selected candidates (only a few) are the relations of the politicians, no nexus has been shown not to speak of establishing the same as to how their such relation worked preferably for them in the selection. Such vague allegations without anything more cannot move the writ court to draw the inference as has been desired by the petitioners.

18. There is another aspect of the matter. The petitioners have levelled allegations against the members of the APSC even to the extent of favouring the blue eyed candidates on the strength of political and monitory power. They have also levelled allegations against the experts who conducted the selection. Allegations have also been made against the Ministers and politicians. Apart from failure to establish the same, the said members, experts. Ministers and politicians are also not party to this proceeding. In view of the allegations made against them, it was incumbent on the part of the petitioners to make them party respondents. They have been failed to name the members and the experts, although serious allegations have been hurled against them. Thus, on this score also the writ petitions are not maintainable.

19. As regards the allegations that the select list having not been published as per the requirement of Rule 43 of the Rules of 1986, suffice is to say that the requirement of the said rule to place the select list in the Notice Board and to send the copy of the same to the press/newspaper with a request to publish the same, has been complied with. Apart from the fact that all the petitioners are in

possession of the copies of the select list, but for which they could not have annexed the same to the writ petitions, it is also on record that the select list has been placed in the Notice Board of APSC and the copies thereof have also been sent to the press/newspapers for publication. If the select list has not been published in the newspapers, same cannot lead to violation of Rule 43. At best, same can be regarded as an irregularity and not illegality. However, there is even no irregularity on the part of the APSC inasmuch as the list has been sent to the newspapers for publication which is the requirement of Rule 43.

20. Let us now examine the provisions of the Rules violation of which has been alleged. Rule 19 provides for constitution of Board for interview/viva voce test. Rule 23 provides that the proceedings of the Board shall as early as possible be placed before the Commission for approval before the recommendations are issued. Such approval may be obtained by circulation by hand or in a meeting of the Commission. As per Rule 48, where multiple Boards are constituted, the envelopes containing the original mark sheets of interview held by different Boards shall be sent to the Chairman/Senior most members for preparation of results, which shall be sent to all members of the Board for signatures.

21. I have carefully verified the records produced by the learned Standing Counsel, APSC. It appears that multiple Boards were constituted for each branch of the posts. As per the requirement of Rule 23 the proceedings of the Board were placed before the Commission for approval and the necessary approval was also accorded. As regards the preparation of results combining the mark sheets of the different Boards and thereafter to obtain the signatures of all the members, the records have revealed that all the members including the chairman of APSC have put their signatures in the final result sheets. Thus, it cannot be said that there was violation of Rule 48 of the Rules. Rule 53 of the Rules empowers the Commission to deal in such manner as they deem fit with any matter not specifically provided for in the rules. Thus, the Commission is also empowered to deal with the particular situation not specifically envisaged in the rules.

22. During the course of hearing learned Counsel for the petitioners pertaining to Anatomy, Physiology, Medicine, Pathology, SPM, Anesthesiology and Radiology have furnished the particulars of their academic career, qualification, experience, etc. bringing comparison with the candidates placed above them in the select list. First of all, the petitioners while making such comparison have not disclosed about the academic career of the candidates above them, although, some instances having given as to how beyond MBBS degree, some of the petitioners are better qualified. In this connection, the Secretary, APSC by his letter dated 11.4.2006 addressed to the learned Standing Counsel, APSC has furnished the following information.

ASSAM PUBLIC SERVICE COMMISSION

\*\*\*\*\*

No. 64PSC/CC-6/26/2006-2007, Dated Guwahati, the 11th April, 2006

To : Mr. T. Ch. Chutia, Standing Counsel, APSC.

Sub : Cases in connection with rectt. to the post of Demonstrator/Registrar/Resident Physician, etc., in Medical Colleges under H&F.W. (B).

Sir,

In inviting a reference to subject cited above, I am directed to inform you the following things for your help to deal with the cases.

1. The recruitment is called direct recruitment.

2. The recruitment process is as follows:

(i) Interview Board consists of a member of the Commission and an expert from concerned department.

(ii) Experts, especially in this rectt. were not below the rank of Asstt. Professor.

(iii) Expert deputed by Govt. from different medical colleges of Assam, (iv) Experts are at liberty to give their opinion independently.

(v) In this rectt. 100 marks were allocated, out of which 50 marks earmarked for academic career from HSLC onwards with their percentage break up; the rest 50 marks were allocated for Board including experts.

(vi) Marks of academic career from HSLC onwards are converted in the following manner -

A candidate who has 66% of marks in HSLC will get 6.6 marks, if he has 58% marks in HSSLC, he will get 5.8 marks and so on and so forth.

Yours faithfully Sd/- Illegible Secretary Assam Public Service Commission, Jawaharnagar, Khanapara, Guwahati-22.

23. I have verified the above stand of the APSC with the records. I have also verified as to whether there was any deviation in the above procedure towards conducting the selection. To quell any doubt, I have also taken the pain to verify the mark sheets containing the marks under different heads which include the head of experience and knowledge of the subject apart from the other heads including the heads as indicated in the above quoted letter. Upon verification of the same, it appears that the select list has been prepared strictly on merit on the basis of the total marks obtained by the candidates under different heads. Needless to say that it is the total marks which count for selection and not the mark under a particular head. Even if one excels in a particular head, that by itself cannot make the selection for him but it is the total marks obtained by him, which eventually count for selection and merit position. Upon verification of the entire records, I do not find any infirmity in awarding marks. It is one thing to say that the marks were not given as per the desire of the candidates, but it is



another thing as to what are the marks obtained by him under different heads. The writ Court exercising its power of judicial review under Article 226 of the Constitution of India does not have the expertise and/or the measuring rod to scrutinize and/or measure the respective merits of the candidates.

24. Mr. T.C. Chutia, learned standing counsel, APSC vehemently argued that having regard to the contradictory stand in writ petitions, they are liable to be dismissed without entering into the merit of the case. Specifically referring to the writ petitions bearing Nos. WP(C) Nos. 1690, 1163, 1871, 1875, 1667, 1849, 1874, 1873, 1661, 1664, 1872, 1916 and 1666 of 2006, he pointed out that although the petitioners applied for the particular post in the particular subject, but have made grievance in respect of the results of other posts in other subjects. He also pointed out as to how some of the petitioners are not even selected. His further argument was that when the petitioners are selected, but their positions in the select list may not permit their appointment, the said petitioners after, getting the selection cannot question the validity of the list, so far as the same relates to their positions in the merit list. The contention raised by Mr. Chutia, learned Counsel representing the APSC merits consideration. However, since otherwise also, I do not find any merit in the writ petitions, this contention of Mr. Chutia need not be elaborated.

25. It need not be reiterated that the writ court exercising its power of judicial review under Article 226 of the Constitution of India cannot make a roving enquiry into the kind of allegations made in the writ petitions. The allegations are also all vague, indefinite and without any materials. It will be too dangerous to draw any inference on the basis of such allegations. The decisions on which Mr. K.N. Choudhury, learned Additional Advocate General placed reliance, i.e. (1998) 2 GLR 242 Pradyut Sarma v. APSC; 2001 (3) GLT (Debajani Choudhury v. State of Assam and Matiur Rahman Bhuyan v. State of Assam reported in (2002) 2 GLR 179 are all to remind this court the limit, scope and jurisdiction of writ court. In view of my aforesaid finding relating to the selection questioned in this writ petitions, I need not make any further discussions on those decisions. Suffice is to say that the decisions support the case of the respondents. In the aforesaid case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, the Apex Court has observed, thus:

9. ?It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merit as made by such an expert committee cannot be brought in challenge only on the round that the assessment was not proper or justified as that would be the function of an

appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

16. ...The petitioners subjectively feel that as he had fared better in the written test and had got more marks therein as compared to concerned selected respondents, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of concerned candidates by the expert committee before whom these candidate appeared for the viva voce test. Merely on the basis of petitioners apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the members of the interview committee against the petitioners. They have also not alleged any mala fides on the part of the interview committee in this connection. Consequently, the attack on assessment of the merit of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the concerned respondents. It cannot be the subject-matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned. In the light of the affidavit in reply filed by Dr. Girija Dhar to which we have made reference earlier, it cannot be said that the expert committee had given a deliberate unfavourable treatment to the petitioners. Consequently, this contention also is found to be devoid of any merit and is rejected.

26. The writ petitions having been answered in the above manner, I now proceed to look into the particular grievance raised by the petitioner in WP(C) No. 1916/2006.<sup>1</sup> make it clear that dismissal of the writ petitions on the grounds aforementioned has got nothing to do with this writ petition since the grievance raised is altogether different. In this case, the petitioner applied for the post of Registrar of Medicine as ST(H) candidate. In the select list his name appears at serial No. 25 as ST (H) candidate. In the advertisement also one post was indicated for ST(H) category as backlog. However, in the select list while indicating the total 8 posts of Registrar of Medicine, the category-wise distribution of posts, has excluded the category of ST(H). As per the said distribution, SC, OBC and unreserved posts have been shown as 1, 1 and 3 respectively. Rests 3 posts have been shown one each against SC, OBC and ST(P) as the backlog. According to the petitioners, this is contrary to the advertisement in which one post was indicated as backlog against the category ST(H). Thus, according to the petitioner, he having been selected as the only ST(H) candidates, he is entitled to get appointment against the said post.

27. Mr. Chutia, learned standing counsel, APSC was requested to obtain instruction and as per his instruction after publication of the advertisement in

April 2005, subsequently, the Government by its letter dated 4.6.2005 issued a corrigendum notifying that the backlog vacancy is meant for ST(P) and not for ST(H). In tune with the said corrigendum of the Government, the APSC also issued corrigendum vide their letter dated 19.7.2005. Thus, according to the Government the post no longer remains for ST(H), same being meant for ST(P) as backlog. Although, as per the instruction furnished to Mr. Chutia, the APSC also issued the corrigendum by its letter dated 19.7.2005 and sent to the Director of Information & Public Relation, it is not discernible as to whether the same was published in the newspaper or not. If the same was not published, naturally, the petitioner was not aware of such development, unless he had received the information otherwise. However, that by itself will not entitle the petitioner to claim appointment against the post meant for ST(P), if it really means for ST(P) as backlog. This aspect of the matter is left open to be decided by the Government as per the quota of reservation, operation of the roster and the backlog, if any.

28. The writ petition being WP(C) No. 1916/2006 is answered in the above manner and the other writ petitions are dismissed. However, there shall be no order as to costs.