

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM & ARUNACHAL
PRADESH)**

**ITANAGAR BENCH
NAHARLAGUN**

WP (C) 230 (AP) 2017

- 1. Miss Tana Mariam (Cashier-cum-Assistant),**
Balijan Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
2. Miss Aruna Subba (Cashier-cum-Assistant),
Doimukh Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
3. Miss Mikngam Riba (Cashier-cum-Assistant),
Itanagar Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
4. Miss Kesang Pema (Cashier-cum-Assistant),
Bomdila Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, West Kameng
District, Arunachal Pradesh.
5. Smti. Mitu Gyadi (Cashier-cum-Assistant),
Jang Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Tawang District,
Arunachal Pradesh.
6. Shri Nani Laji (Cashier-cum-Assistant),
Balijan Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
7. Miss Tao Rima (Cashier-cum-Assistant),
Head Office, Arunachal Pradesh State
Co-operative Apex Bank Limited, Naharlagun,
Papum Pare District, Arunachal Pradesh.

8. Shri Nangbia Tayu (Messenger),
Balijan Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
9. Smti. Jami Tallong (Dolo), (Messenger),
Chimpu Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
10. Miss Taba Yayo (Messenger),
Nirjuli Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
11. Miss Kipa Mefa (Messenger),
Nyapin Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Kurung Kumey
District, Arunachal Pradesh.
12. Smti Nabam Tutu (Peon),
Balijan Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
13. Smti. Nikh Anmai (Peon),
Women Branch Naharlagun, Arunachal Pradesh State
Co-operative Apex Bank Limited, Papum Pare District,
Arunachal Pradesh.
14. Smti. Taring Yaning (Peon),
Sangram Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Kurung Kumey
District, Sangram, Arunachal Pradesh.
15. Miss Gyamar Kame (Sweeper),
Nyapin Branch, Arunachal Pradesh State
Co-operative Apex Bank Limited, Kurung Kumey
District, Arunachal Pradesh.

.....Petitioners.

-VERSUS-

1. The State of Arunachal Pradesh,

Represented by the Secretary, Department
of Cooperation, Government of Arunachal Pradesh.

2. The Administrator,

Arunachal Pradesh State Co-operative Apex Bank
Limited, HQ, Naharlagun, Papum Pare District,
Arunachal Pradesh.

**3. The Managing Director, Arunachal Pradesh State Co-
operative Apex Bank Limited, HQ, D-Sector,
Naharlagun, Papum Pare District, Arunachal Pradesh.**

.....Respondents.

Advocates for the petitioner:

Mr. J. Hussain.

Advocates for the respondents:

Mr. S. Tapin, Senior Government Advocate, A.P.
Mr. P. Taffo, SC, Apex Bank.

:::BEFORE:::

HON'BLE MR. JUSTICE KALYAN RAI SURANA

Date of hearing - **29.11.2017.**

Date of judgment - **29.11.2017.**

JUDGMENT & ORDER (ORAL)

Heard Mr. J. Hussain, learned counsel appearing for the petitioners and Mr. S. Tapin, learned Senior Government Advocate appearing for the State respondents.

2.) This is a petition filed under Article 226 of the Constitution of India. The petitioners had challenged the Office Memorandum No.APSCAB/GA/368/88-106 dated 28.04.2017 (Annexure-C), by which

the representation filed by the petitioners for release of their regular pay scale w.e.f. 01.02.2016, was rejected by holding that the regularization of the writ petitioners appear to be de hors the rules and the matter is under investigation by the State Investigation Cell (SIC). The learned counsel appearing for the petitioner has stated that the petitioners were appointed in the month of February 2016 as Messenger, Peon, Sweeper and they were receiving continuous lump sum salary.

3.) Subsequently, the Administrator of the bank (Respondent No. 2), by passing separate orders as indicated below have ordered for regularization of their services, the said orders are as follows:

- (i) Petitioner No. 1 Miss Tana Mariam, (Cashier-cum-Assistant), Vide Memo No.APSCABL/GA/APPTT(308)/dated 07.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `2,400/- per month and posted at Balijan Branch.
- (ii) Petitioner No. 2 Miss Aruna Subba, (Cashier-cum-Assistant), Vide Memo No.APSCABL/GA/APPTT(308)/dated 06.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `2,400/- per month and posted at Doimukh Branch.
- (iii) Petitioner No. 3 Miss Mikngam Riba (Cashier-cum-Computer Operator), Vide Memo No.APSCABL/GA/APPTT(263)/dated 05.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `2,400/- per month and posted at Itanagar Branch.
- (iv) Petitioner No. 4 Miss Kesang Pema, (Cashier-cum-Assistant), Vide Memo No.APSCABL/GA/APPTT(254)/dated 15.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `2,400/- per month and posted at Bomdila Branch.

- (v) Petitioner No. 5 Smti Mitu Gyadi, (Cashier-cum-Assistant), Vide Memo No.APSCABL/GA/APPTT(263)/2015/3480-76, dated 30.11.2015, in pay scale of `5,200-20,200/- plus Grade Pay of `2,400/- per month and posted at Jang Branch.
- (vi) Petitioner No. 6 Shri Nani Laji, (Cashier-cum-Assistant) (CA), Vide Memo No.APSCABL/GA/PF(237)/2015/4530-34, dated 05.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `2,400/- per month and posted at Baliyan Branch.
- (vii) Petitioner No. 7 Miss Tao Rima, (Cashier-cum-Assistant), Vide Memo No.APSCABL/GA/APPTT(302)/2016/4408 dated 15.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `2,400/- per month and posted at HQ Branch.
- (viii) Petitioner No. 8 Shri Nangbia Tayu, (Messenger), Vide Memo No.APSCABL/ADMIN/GA/APPTT(229)/dated 17.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,900/- per month and posted at Baliyan Branch.
- (ix) Petitioner No. 9 Smti Jami Tallong (Dolo), (Messenger), Vide Memo No.APSCABL/ADMIN/GA/APPTT(229)/dated 17.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,900/- per month and posted at Chimpu Branch.
- (x) Petitioner No. 10 Miss Taba Yayo, (Messenger), Vide Memo No.APSCABL/GA/APPTT(322)/2014/4493-97, dated 16.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,900/- per month and posted at Nirjuli Branch.
- (xi) Petitioner No. 11 Miss Kipa Mefa, (Messenger), Vide Memo No.APSCABL/GA/PF(321)/2015/4498-4501, dated

16.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,900/- per month and posted at Nyapin Branch.

(xii) Petitioner No. 12 Smti Nabam Tutu, (Peon), Vide Memo No.APSCABL/ADMIN/GA/APPTT(229, dated 17.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,800/- per month and posted at Baliyan Branch.

(xiii) Petitioner No. 13 Smti Nikh Anmai, (Peon), Vide Memo No.APSCABL/GA/PF(225)/2015/4251, dated 02.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,800/- per month.

(xiv) Petitioner No. 14 Smti Taring Yaning, (Peon), Vide Memo No.APSCABL/GA/PF(344)/2014-16/4409-4412, dated 15.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,800/- per month and posted at Sangram Branch.

(xv) Petitioner No. 15 Miss Gyamar Kame, (Sweeper), Vide Memo No.APSCABL/GA/PF(320)/2014/4488-92, dated 16.02.2016, in pay scale of `5,200-20,200/- plus Grade Pay of `1,650/- per month and posted at Nyapin Branch.

4.) It is submitted that although the regular appointment letters were issued, the petitioners were deprived from availing the regular pay scale and therefore, the petitioners have filed a WP (C) No.144 (AP) 2017 and this Court vide order dated 23.03.2017, directed the Respondent No. 2/ the Administrator of the APSCABL to disposed of the representation filed by the petitioners on 02.03.2017, by a reasoned and speaking order within a period of 01(one) month from the date of receipt of a certified copy of this order. It is submitted that pursuant to the said order, the Administrator (Respondent No. 2) passed a speaking order and that the regularization of the writ petitioners were dehors the Rules and was being investigated by the

SIC and therefore, it is not appropriate to consider their grievances for regular salary and allowances.

5.) It is further submitted by the learned counsel for the petitioner that as on date, their appointment as regular employee still stand and therefore, the petitioners are entitled to their regular pay scale in terms of the letter of appointment referred herein above.

6.) The learned Senior Government Advocate has referred to the affidavit-in-opposition filed by the respondents and it is submitted that the procedure prescribed for appointment of the employees of the bank was not followed in the present case and the writ petitioners were appointed by the previous administrator and as the authorities have found out that the recruitment rules of the APSCABL was not followed, hence, the matter is under investigation by the SIC and therefore, if the illegal appointees are allowed to withdraw regular pay scale the same would cause huge financial lose to the APSCABL. In support of his contention the learned Senior Government Advocate has referred to specific stand taken by the respondents in para 4 & 7, wherein the respondents have taken the stand that the claim for regularization does not hold any water and cannot be considered, and that their services should be discontinued immediately as 06(six) months period is already over as the bank has incurred huge amount for misuse of office power by the then administrator and that the matter is under investigation by the SIC.

7.) Considered the submissions made by the learned counsel for both the sides. In the considered view of this Court, it is seen that the letters of appointment of the petitioners which had been referred earlier still stands as valid, thereby appointing the petitioners on regular basis and in regular pay scale. Although the matter is under investigation, the respondents have not taken any initiative by which it can be understood that the said appointments have been recalled, set aside and quashed by the competent authority. Therefore, the letter of appointment for the petitioners in the regular pay scale is allowed to

stand as a valid appoint till date. Hence, it is not open to the respondents to regularize the services of the petitioners and then to deny the benefit of regular pay scale. This Court finds no prohibitory orders to restrain the authorities from recalling the said appointment letters mentioned herein before. Therefore, in the considered opinion of this Court, the benefit of the regular pay scale cannot be denied to the petitioners.

8.) Moreover, on perusal of the statement made in the affidavit-in-opposition filed by the respondents, it appears that the deponent who has sworn the affidavit is under a misconception of facts. It appears that the respondents are under the impression that the regularization of the petitioner is the subject matter of this writ petition and has totally misunderstood that this was not the subject matter of the petition, but in this case, the petitioners are seeking relief of releasing their regular pay scale. In this connection in order to demonstrate the stand taken by the respondents, the relevant paragraphs para 4 & 7 of the affidavit-in-opposition filed by the respondents is reproduced below:

"4. Claiming for regularization of services does not hold any water and cannot be considered rather the services should be discontinued immediately as six month time period is already over long back and the bank is incurring huge amount just for misuse of office power by the Administrator.

7. That with regards to the statement made in paragraph-5 of the writ petition, the deponent begs to state that since the matter is under investigation by the SIC, it is not proper to take a decision on the matter."

9.) Therefore, in the considered opinion of this Court, till date, the appointment letters issued in favour of the petitioners stand as a valid order. Therefore, the petitioners cannot be denied the benefit of

regular pay scale in terms of the said orders. Therefore, this writ petition stands allowed by directing the respondent Nos. 2 & 3 i.e. the Administrator, Arunachal Pradesh State Co-operative Apex Bank Limited, and the Managing Director of the said Bank to allow the benefit of regular scale of pay and other entitled emoluments to the petitioners w.e.f. from such date as is mentioned in the respective appointment letters of the petitioners. It is further directed that the Office Memorandum No.APSCAB/GA/368/88-106 dated 28.04.2017 shall not stand as bar for the State authorities to comply with the direction of this Court for releasing regular pay scale to the petitioners.

10.) It is made clear that this order should not be construed to stand as a bar for the respondents to bring to a logical conclusion of the investigation that is being carried out by the SIC and to take appropriate measures in accordance with law.

11.) The entire exercise of releasing the regular pay scale in terms of this order shall be carried out by the competent authority within a period of 04(four) months from the date of receipt of the certified copy of this order.

12.) This writ petition stands allowed on the terms as indicated above.

JUDGE

Cha Gang