

GAHC010093842023



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

Case No. : WP(C)/2454/2023

KAMALESWAR TALUKDAR AND 8 ORS
S/O- LATE LOHIT CHANDRA TALUKDAR,
R/O- VILL. TAPA, P.O. SARU TAPA,
P.S.- BARPETA, DIST.- BARPETA,
PIN- 781352, ASSAM.
PAN- AIUPT1136G

2: DIBYAJYOTI BORAH
R/O- DEODHAR
P.O.- RANTHALI

DISTRICT- NAGAON
PIN- 782002
ASSAM.
PAN- AXJPB7731R

3: GANESHJYOTI DEKA
S/O- LATE JANMI RAM DEKA

R/O- TOWN- SARTHEBARI

KAJITHER CHUPA

P.O./ P.S.- SARTHEBARI
DISTRICT- BARPETA

PIN- 781307
ASSAM.
PAN- ARVPD22696.

4: PRANJIT DAS

C/O- BINOD CHANDRA DAS

R/O- HOWLY TOWN
DISTRICT- BARPETA

PIN- 781316
ASSAM.
PAN- ADLPD4601M

5: NILOTPAL BAROOAH
C/O- TANKESHWAR BAROOAH

R/O- GANESH MANDIR PATH

JAYANAGAR
BYE LANE-3
HOUSE NO. 31

P.O.- KHANAPARA
P.S.- DISPUR

GUWAHATI
KAMRUP(M)
781022

ASSAM.
PAN- EWLBPB2300H.

6: MD. ALIFAUZHASAN
S/O- LATE AMZED ALI
R/O- COL. J. ALI ROAD
LAKHTOKIA

P.O.- GUWAHATI
PIN- 781001

KAMRUP(M)
ASSAM.
PAN- ABRPH4475J

7: NAYAN JYOTI BARMAN
C/O- LATE JTENDRA NATH BARMAN

R/O-BIDYAPUR
WARD NO. 3

LANE NO. 3
P.O.- NALBARI

DISTRICT- NALBARI
PIN- 781335
ASSAM.
PAN- AOLPB0287K

8: BHASKAR CHOUDHURY
S/O- LATE CHANDRA MOHAN CHOUDHURY
R/O- VILL- THEKA
P.O.- SARUPETA

DISTRICT- BARPETA
PIN- 781318

ASSAM.
PAN- AHZPC2798K

9: LACHIT BARMAN
S/O- LATE RAKHORAM BARMAN

R/O- VILL./P.O.- DEHAR KALA KUCHI

P.S.- MUKALMUA
DISTRICT- NALBARI

PIN- 781310
ASSAM.
PAN- BZHPB4516K

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
FINANCE ESTT(B) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF ACCOUNTS AND TREASURIES
ASSAM
GUWAHATI- 781006.

3:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY BY ITS SECRETARY
JAWAHAR NAGAR

KHANAPARA
GUWAHATI- 781022

Advocate for the Petitioner : MR. P KATAKI

Advocate for the Respondent : MR. T. J. MAHANTA
: MS. P. SARMA
: MR. R. BORPUJARI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 08-05-2023

Heard Mr. P. Kataki, the learned counsel appearing on behalf of the petitioners and Mr. T. J. Mahanta, the learned Senior counsel assisted by Ms. P. Sarma, the learned counsels appearing on behalf of the respondent No.3. I have also heard Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 2.

2. The present writ petition is taken up for disposal at the motion stage itself.
3. The case of the petitioners herein is that the petitioners were duly selected and their names were included in a select list dated 03.11.2000 and more particularly, in respect to a list for future vacancies. It appears that the said select list was extended by the authorities from time to time as would appear from Annexures 3, 4, 5 and 6. In the meantime, it appears on record that a writ petition was filed being WP(C) No.8633/2003 wherein the present writ petitioner No.4 was one of the writ petitioners in the said proceedings. The said writ petition was disposed of vide an order dated 31.10.2009 with a direction that in

case the select list dated 03.11.2000 is/are in force or is/are sought to be extended and the concerned departmental authorities intend to make further appointments therefrom, they would do so scrupulously following the order of merit of the candidates therein. It was further clarified in the said order that the directions so given was for the reason that the petitioners therein had approached this Court at a point of time when the select list was/were valid. It was further observed that the order should not be construed to be a direction to the respondents to appoint the petitioners and the issue is left to them to be attended to in accordance with law.

4. It further appears from the records that there was another writ petition being filed in the year 2010 being WP(C) No.5366/2010 which was also disposed of in terms with the directions so given in the order dated 30.10.2009 in WP(C) No.8633/2003. It is relevant to mention herein that in WP(C) No.5366/2010, the petitioner Nos. 6, 8 and 9 of the present writ petition were the petitioners in the said writ petition.

5. It further appears from the records that on 17.08.2010, the Director of Accounts and Treasuries had passed an order stating inter alia that there shall be no further extension of the validity of the select list dated 03.11.2000 as the said select list had not been re-validated since 03.11.2005. It was further made clear that the select list dated 03.11.2000 was not valid and hence it is not to be considered for appointment of the persons in the select list for the post of Assistant Account Officers.

6. It further appears from the records that there was another writ petition i.e. WP(C) No.3276/2013 which was also disposed of vide an order dated 11.08.2015. A perusal of the array of parties in WP(C) No.3276/2013 would

show that the petitioner No.9 herein was one of the petitioners in the said proceedings. Paragraph Nos. 22 and 23 of the said order dated 11.08.2015 being relevant are quoted hereinunder:

“22. *It is a settled proposition that merely because name of a candidate appears in the select list, he cannot claim appointment as a matter of right on the basis of such selection. The Apex Court in a catena of judgments has made it abundantly clear that a person whose name appears in the select list does not acquire any indefeasible right of appointment. He acquires no vested right of appointment. In the present case, names of petitioners Nos. 1 to 13 are in the select list for future vacancies and not in the select list for the actual vacancies. Further, petitioner Nos. 14 to 29 are not selected at all. The legal position is further clear that the moment the posts advertised are filled up the select list would get exhausted. It is another matter that in the present case the respondents had made appointments beyond the notified vacancies, but the same cannot be a ground to confer a right to the petitioners to a similar course of action.*

23. *Regarding extension of validity of the select list, it is also a settled position that no mandamus can be issued directing extension of the validity of the select list. In any case, for a thing or a list to be extended it must be subsisting. A thing or a list which is not in existence or in subsistence cannot be extended. The validity of the select list had expired way back on 03.11.2006. More than 8 (eight) years have gone by since then. No direction can be issued at this point of time to extend the validity of the select list and to consider appointment of the petitioners based thereon. Any such direction will be violative of the right to equality of all the candidates, who have acquired eligibility in the meanwhile.”*

7. Therefore, from a perusal of the order dated 17.08.2010 issued by the Director of Accounts and Treasury as well as the order dated 11.08.2015 in WP(C) No.3276/2013, any right which the selected candidates had on the basis

of the select list dated 03.11.2000 stood nullified. The present writ petition has been filed again by the petitioners herein agitating the same claims now on the ground that the Assam Public Service Commission had issued an advertisement dated 22.12.2022 for filling up the post of Assistant Accounts Officer.

8. This Court fails to understand when the said select list dated 03.11.2000 had already lost its force which has been further clarified in the order dated 17.08.2010 issued by the Director of Accounts and Treasuries and the order dated 11.08.2015 in WP(C) No.3276/2013, how can the petitioners herein again re-agitate the same. Under such circumstances, this Court is of the unhesitant opinion that the petitioners have no right on the basis of their names being included in the select list dated 03.11.2000 for the reasons above mentioned and as such, the question of challenging the advertisement dated 22.12.2022 issued by the respondent No.3 does not arise.

9. Before concluding, this Court further would like to take note of the submissions made by the learned counsel appearing on behalf of the petitioners that the petitioners have submitted a representation on 17.03.2023 to Principal Secretary, Finance, Government of Assam and this Court ought to issue a direction to the said authority to consider the said representation. From what has been already noted hereinabove, the petitioners have no right whatsoever to claim any appointment on the basis of the select list dated 03.11.2000 which had already spent its force and under such circumstances, this Court is also of the opinion that the petitioners do not have any legitimate expectation for consideration of their claims. Under such circumstances, the question of issuing a direction to the Principal Secretary, Finance, Government of Assam for consideration of the representation dated 17.03.2023 does not arise.

10. Considering the above, the instant petition stands dismissed.

JUDGE

Comparing Assistant