

GAHC010161682011



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

Case No. : WP(C)/5622/2011

SANKAR MALAKAR
ASSTT. INSPECTOR OF EXCISE, S/O LT. SURENDRA MALAKAR, C/O
D.P.SEAL, PARBATIA FEEDER ROAD, DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EXCISE DEPTT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER OF EXCISE

ASSAM HOUSEFED COMPLEX
DISPUR
GHY-6

3:ARJUN CH. DAS

INSPECTOR OF EXCISE
ASSAM
S/O LT. SUBASH KR. DAS
C/O MRS. R.B.DAS
SUBASH BHAWAN
LACHIT NAGAR
GUWAHATI-

Advocate for the Petitioner : MR.R SALOI

Advocate for the Respondent : SC, EXCISE and CUSTOMS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 21.06.2023

Heard Ms. M. Zomuanpuui, the learned counsel appearing on behalf of the Petitioner and Ms. M. Kalita, the learned counsel appearing on behalf of the Respondent Nos. 1 and 2. I have also heard Mr. A. K. Bharali, the learned counsel appearing on behalf of the Respondent No.3.

2. The instant writ petition was filed on 19.09.2011 for a direction that the Respondents should antedate the appointment of the Petitioner to the Post of Assistant Inspector, Excise w.e.f. 19.04.1994 i.e. from the date of the appointment of the Respondent No.3 as well as also to re-fix the seniority of the Petitioner in appropriate place in the seniority list published as on 01.12.2008 i.e. placing him above the Respondent No.3 and others in the Cadre of Assistant Inspector of Excise.

3. A perusal of the writ petition discloses that pursuant to an advertisement published in the year 1990 for recruitment to the post of Assistant Inspector of Excise, Assam, the Petitioner applied for the said post. The Petitioner was directed to appear in the written test held on 13.12.1992 and the Petitioner having qualified in the said written test, appeared in the interview held on 21.02.1993 as per the call letter dated 08.02.1993. It further reveals that there was a police verification carried out however the Petitioner did not know as regards the fate of his appointment pursuant to the said selection proceedings. The Petitioner was however informed by the Respondent Authorities that his name was much below in the select list and as such his appointment would be made when his turn would come depending on the availability of the post.

4. It further reveals from the records that the Petitioner having failed to get his appointment, the Petitioner applied for appointment against the temporary post of Excise Constable and he was appointed to the post of Excise Constable vide an order dated 11.05.1994 read with the order dated 08.03.1995 on temporary basis. Subsequent thereto, there was another advertisement issued in the year 2005 for appointment to the post of the Assistant Inspector Excise. The Petitioner again participated in the said selection process and was appointed to the post of the Assistant Inspector, Excise vide the order dated 09.01.2006. It is the further case of the Petitioner that in the year 2011, the Petitioner could come to learn from one Assistant Inspector of Excise that the Petitioner was actually selected in the select list of the year 1993 but was denied the appointment illegally. Under such circumstances, the Petitioner applied for a copy of the select list of the year 1993 under the Right to Information Act, 2005. In the said select list which was supplied pursuant to the application under Right to Information Act, 2005 that the name of the Petitioner appeared at Serial No.72 whereas the Respondent No.3's name appeared at Serial No.73. It is under such circumstances, the Petitioner has approached this Court seeking a Writ in the nature of Mandamus directing the Respondents to antedate the appointment of the Petitioner to the post of Assistant Inspector, Excise w.e.f. 19.04.1994 i.e. from the date of appointment of the Respondent No.3 and to re-fix the seniority.

5. It reveals on record that an affidavit-in-opposition was filed by the Respondent Nos. 1 and 2. In paragraph No.5 of the said affidavit-in-opposition, it was stated that as per Rule 6(5) of the Assam Subordinate Excise Service Rule, 1990, the inclusion of a candidate's name in the list shall not confer right to appointment, unless the Commissioner of Excise, Assam was satisfied after

such enquiry as may be deemed necessary that the candidate is suitable in all respects for appointment. It was mentioned that the Petitioner was perhaps found unsuitable and as such his appointment was not considered. Further to that, it was mentioned that the select list was duly published and also hanged in the Office Notice Board. It was stated in the said affidavit-in-opposition that the Petitioner did not stake his claim at that moment and was silent and as such he cannot claim appointment to a particular service or consequential benefits after about 17 years from the expiry of the select list of 1994. To the said affidavit-in-opposition, the Petitioner had filed affidavit-in-reply. The Respondent No.3 had also filed the affidavit-in-opposition. It further reveals that the Petitioner had also submitted a reply in that regard.

6. I have heard the learned counsels for the parties. Upon perusal of the materials on record, it reveals that the appointment of the Respondent No.3 along with other candidates happened in the year 1994. The Petitioner had filed the instant writ petition only in the year 2011. By that period, 17 years have already passed by. It further reveals from the records that the Petitioner did not challenge the said select list at that relevant point of time and had participated in a separate selection proceedings in the year 2005 and was given the appointment to the post of Assistant Inspector of Excise. The non-challenging of the selection made in the year 1994 had created vested rights upon the candidates/appointees pursuant to the said select list. In the opinion of this Court, the said vested rights cannot be unsettled on the basis of a writ petition filed after 17 years.

7. Under such circumstances, this Court is of the opinion that this is not a fit case for exercise of jurisdiction under Article 226 of the Constitution and

accordingly, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant