

GAHC010208862023



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

Case No. : WP(C)/5473/2023

DIGANTA KUMAR NATH
S/O- DULAL CHANDRA NATH,
R/O- VILLAGE AND P.O- BAIDYATUP,
DIST- NAGAON, ASSAM, PIN-782003

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY TO THE
TO THE GOVERNMENT OF ASSAM
LABOUR DEPARTMENT
DISPUR
GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06

4:THE DIRECTOR
OF EMPLOYMENT AND CRAFTSMAN TRAINING
ASSAM
REHABARI
GUWAHATI-0

Advocate for the Petitioner : MR. S Ali

Advocate for the Respondent : GA, ASSAM

**BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

O R D E R

20.09.2023.

Heard Mr. S. Ali, learned counsel for the petitioner, who submits that the petitioner applied for appointment to a Grade-IV post, pursuant to an advertisement dated 18.05.2007, issued by the Director of Employment and Craftsmen Training, Assam. Thereafter, the Director issued letter dated 20.02.2009, to the Director of Handloom and Textile, Ambari, Guwahati, sending him a list of recommended candidates for appointment to Grade-IV posts, which included the petitioner.

2. As no appointments were being made, the petitioner submitted an RTI Application on 26.09.2011 to the SPIO/Deputy Director of Employment, in the office of Director of Craftsmen Training, Assam. The reply to the RTI Application was given on 20.10.2011, stating that none of the recommended candidates had been appointed to Grade-IV posts and one writ petition, i.e. WP(C) No.5007/2009, had been filed in the High Court.

3. Mr. S. Ali, learned counsel for the petitioner submits that a number of Writ Petitions were thereafter filed by similarly placed persons as the petitioner, challenging the inaction of the State Government in not making appointments to various Grade-III and Grade-IV posts, despite being recommended by the Selection Committee. The various Writ Petitions filed by the other persons, the

leading case being WP(C) No.3874/2009, was disposed of vide order dated 09.12.2013, wherein this Court directed that with regard to the cases involving appointment to Grade-IV posts, the Chief Secretary to the Government of Assam was to ensure that the cases of the recommended candidates should be placed before the State Cabinet for taking an appropriate decision. The entire exercise was to be carried out within a period of four months from the date of receipt of a copy of the order dated 09.12.2013, passed in the batch of cases, the leading case being WP(C) No.3874/2009.

4. The petitioner's counsel submits that though the petitioner was not a party in any of the cases that had been filed and disposed of by the High Court vide order dated 09.12.2013, the petitioner submitted a representation dated 30.08.2023, to the Chief Secretary, Assam to take a decision to appoint him to a Grade-IV post, in terms of the order dated 09.12.2013, passed in the batch of Writ Petitions, the leading case being WP(C) No.3874/2009.

5. Ms. A. Talukdar, learned counsel for the respondents No.1 & 2 submits that the present Writ Petition is hit by delay and laches, as the petitioner has not approached this Court earlier, claiming appointment on the basis of the recommendation made vide letter dated 20.02.2009. She further submits that the petitioner not being a party to any of the Writ Petitions, the leading case being WP(C) No.3874/2009, which was disposed of on 09.12.2013, the petitioner cannot be allowed to ride piggyback on the order obtained by other persons in those cases.

6. I have heard the learned counsels for the parties.

7. In the case of State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others, reported in (2015) 1 SCC 347, the Hon'ble Supreme Court

has held that the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution. However this principle is subject to the well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who do not challenge the wrongful action in their cases and wake up after long delay only because of the reasons that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

8. As can be seen from the submissions made by the learned counsels for the parties and on perusal of the record, the petitioner had been recommended for appointment to a Grade-IV post in the year 2009 and till date, no appointment has been made on the basis of the said recommendation made in the year 2009. While persons who were similarly situated as the petitioner had approached this Court vide various writ petitions, the leading case being WP(C) No.3874/2001, which were all disposed of on 09.12.2013, the petitioner chose not to pursue his case for appointment to a Grade-IV post. It is only now that the petitioner has made a claim for appointment to a Grade-IV post on the basis of the recommendation made in the year 2009, by filing this Writ Petition on 15.09.2023, that is more than fourteen (14) years after being recommended for the post.

9. The petitioner is now trying to ride piggyback on the order dated 09.12.2013, passed in the batch of Writ Petitions, which were disposed of ten

years ago.

10. As held by the Supreme Court in Arvind Kumar Srivastava (Supra), when a particular set of employees are given relief by the Court, all other identically situated persons need to be treated alike. However the said principle is subject to well recognized exceptions in the form of laches and delay as well as acquiescence, which would be a valid ground to dismiss their claim. Accordingly, in view of the delay of 14 years in approaching this Court and as the petitioner has apparently acquiesced to not being given any appointment to a Grade-IV post on the basis of the 2009 recommendation, this Court is not inclined to exercise it's discretion at this late stage.

11. This Writ Petition is accordingly dismissed.

JUDGE

Comparing Assistant