

GAHC010316182019



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

Case No. : WP(C)/9459/2019

SHASHINDRA NATH BAISHYA
S/O. LT. M. BAISHYA, R/O. HOUSE NO.4, SONAI PATH, JAPORIGOG,
GUWAHATI-781005, DIST. KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
DISPUR
GUWAHATI-781006.

3:BISWARANJAN SAMAL
IAS
S/O. SRIDHAR SAMAL
THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
BLOCK-D
4TH FLOOR
DISPUR
GUWAHATI-781006.

4:THE SECRETARY
TO THE GOVT. OF ASSAM

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
DISPUR

GUWAHATI-781006.

5:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
DISPUR
GUWAHATI-781006.

6:THE SELECTION BORAD
CONSTITUTED FOR PROMOTION OF LEGAL METROLOGY DEPTT. FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT. DISPUR
GUWAHATI-781006
REP. BY ITS CHAIRMAN

7:THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22
REP. BY ITS SECRETARY

8:THE COMMISSIONER AND SECRETARY
WELFARE OF PLAINS TRIBES AND BACKWARD CLASSES DEPTT.
DISPUR
GUWAHATI-781006
ASSAM.

9:THE STATE LEVEL SCRUTINY COMMITTEE
GOVT. OF ASSAM
WELFARE PLAINS TRIBES AND BACKWARD CLASSES DEPTT.
DISPUR
GUWAHATI-781006
ASSAM.

10:NIRMAL CHANDRA TAID
S/O MADAN CHANDRA TAIN
JOINT CONTROLLER OF LEGAL METROLOGY (ADMINISTRATION)
R/O HOUSE NO. 57B
WARD NO. 6
SONAIGHULI
P.O. SAWKUCHI
DIST. KAMRUP (M)
ASSAM
PIN-78104

Advocate for the Petitioner : MR S N SARMA SENIOR ADVOCATE

Advocate for the Respondent : SC, APSC

Linked Case : WP(C)/211/2020

SHASHINDRA NATH BAISHYA
S/O- LT. M. BAISHYA
R/O- HOUSE NO. 4
SONAI PATH
JAPORIGOG
GUWAHATI- 781005
DIST.- KAMRUP(M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY.-06.

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
DISPUR
GHY.- 781006.

3:BISWARANJAN SAMAL
I.A.S.
S/O- SRIDHAR SAMAL
FORMER PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT. AND PRESENTLY
WORKING AS PRINCIPAL SECY. TO THE GOVT. OF ASSAM
CO-OPERATION AND MANAGING DIRECTOR
ASSAM FOOD AND CIVIL SUPPLIES CORPORATION LTD.
DISPUR
GUWAHATI- 781006.

4:THE SECY. TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
DEPTT.
DISPUR
GHY.-06.

5:THE DY. SECY. TO THE GOVT. OF ASSAM
FOOD

CIVIL SUPPLIES AND CONSUMER AFFAIRS
DEPTT.
DISPUR
GHY.-06.
6:THE JT. SECY. TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
DEPTT.
DISPUR
GHY.-06.

Advocate for : MR S N SARMA SENIOR ADVOCATE
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/9109/2019

SHASHINDRA NATH BAISHYA
S/O. LT. M. BAISHYA
R/O. HOUSE NO.4
SONAI PATH
JAPORIGOG
GUWAHATI-781005
DIST. KAMRUP (M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006.

2:THE PRINCIPAL SECY.
TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
DISPUR
GUWAHATI-781006.
3:BISWARANJAN SAMAL
IAS
S/O. SRIDHAR SAMAL
THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.

BLOCK-D
4TH FLOOR
DISPUR
GUWAHATI-781006.
4:THE SECRETARY TO THE GOVT. OF ASSAM

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
DISPUR
GUWAHATI-781006.
5:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

WELFARE OF PLAINS TRIBES AND BACKWARD CLASSES DEPTT.
DISPUR
GUWAHATI-781006
ASSAM.
6:THE STATE LEVEL SCRUTINY COMMITTEE

GOVT. OF ASSAM
WELFARE PLAINS TRIBES AND BACKWARD CLASSES DEPTT.
DISPUR
GUWAHATI-781006
ASSAM.
7:NIRMAL CHANDRA TAID
S/O. MADAN CHANDRA TAID
JOINT CONTROLLER OF LEGAL METROLOGY (ADMINISTRATION)
R/O. HOUSE NO.57B
WARD NO.6
SONAIGHULI
P.O. SAWKUCHI
DIST. KAMRUP (M)
ASSAM
PIN-781040.
8:ASSAM PUBLIC SERVICE COMMISSION

REP. BY ITS SECRETARY
KHANAPARA
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781022.

Advocate for : MR. P K GOSWAMI
Advocate for : SC
APSC appearing for THE STATE OF ASSAM AND 7 ORS.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Dates of Hearing : 11-12-2020

Date of Judgment : **17-08-2023**

JUDGMENT

Heard Mr. P. K. Goswami, learned Senior Advocate, Mr. S. N. Sarma, learned Senior Advocate, assisted by Mr. K. Kalita, learned counsel for the writ petitioner. Also heard Mr. R. Dev. Choudhury, learned Senior Government Advocate, Assam, Mr. G. Choudhury, Standing Counsel, Assam Public Service Commission (APSC), Mr. S. Chamaria, learned counsel for the private respondent No. 3 and Mr. N. Dutta, Senior Advocate, assisted by Mr. M. Das, learned Advocate for the private respondent No. 7/10.

2) Matter pertains to promotion to the post of Controller of Legal Metrology, Assam under the Food Civil Supplies and Consumer Affairs Department of the State disregarding the better claim of the petitioner Sachindra Nath Baishya, Joint Controller of Legal Metrology (Standard Laboratory) and promoting the respondent Sri Nirmal Chandra Taid, Joint Controller of Legal Metrology (Administration) to the said post, who is junior to the petitioner in service.

3) While he was serving as Joint Controller of Legal Metrology (Standard Laboratory), Assam by order dated 30.11.2018 the authorities in the Food Civil Supplies and Consumer Affairs Department of the State allowed the petitioner to hold the current charge of Controller of Legal Metrology, Assam.

4) Certain complaints have been raised against him questioning the genuineness of his Caste Certificate so as to deprive him from promotion to the post of Controller of Legal Metrology without proceeding the required enquiry in that regard as contemplated under the law [*Kumari Madhuri Patil Vs. Additional Commissioner* reported in (1996) 6 SCC 241].

5) The Court by order dated 22.11.2010 passed in WP(C) No. 5684/2010, wherein he was respondent No.4, observed that the petitioner belongs to Schedule Caste community. As the respondent authorities did not take any step for filling up of the vacant post of Controller of Legal Metrology, Assam by holding the required DPC and was dilly dallying the matter, the petitioner preferred writ petition being WP(C) No. 2506/2019. The Court after hearing the

matter by order dated 11.04.2019 disposed of said WP(C) No. 2506/2019 directing the respondent authorities in the Food Civil Supplies and Consumer Affairs Department of the State to verify the claim of the petitioner and if such claims of the petitioner are found to be correct, to proceed to hold the promotion of the petitioner to the highest post of Controller of Legal Metrology in the said department observing that such promotion shall be subject to any decision that may be arrived at by the competent authority pertaining to the Caste Certificate of the petitioner with the further observation that as the petitioner is the senior most officer in the Department, he shall be allowed to hold the post of Controller of Legal Metrology in terms of the order dated 30.11.2018 (noted above) till appropriate order is issued for promotion.

6) Assam Anusuchit Jati Yuba Chatra Santha preferred a Review Pet. No. 109/2019 against the order dated 11.04.2019 passed in WP(C) No. 2506/2019 that was preferred by the petitioner. The Court after hearing the said review petition by order dated 13.06.2019 dismissed the same.

7) By Notification dated 04.12.2019 the Principal Secretary to the Government of Assam in the Food Civil Supplies and Consumer Affairs Department temporarily promoted Nirmal Ch. Taid, respondent No.7, Joint Controller of Legal Metrology, to the post of Controller of Legal Metrology (CLM), Assam under Regulation 4 (d) of the Assam Public Service Commission (Limitation and Functions) Regulations, 1951 w.e.f., 04.12.2019. Being aggrieved, the petitioner challenged the said promotion of the respondent No. 7 in WP(C) No. 9109/2019.

8) Being aggrieved with said promotion of the respondent No.7 pursuant to the impugned notification dated 04.12.2019, the petitioner preferred a writ petition, being WP(C) No. 91019/2019 and the Court after hearing the matter by order dated 06.12.2019 suspended the said notification dated 04.12.2019 by which the respondent No.7 was promoted to the post of CLM, Assam and allowed the petitioner to serve as CLM, Assam in terms of the order dated 11.04.2019, passed in WP(C) No. 2506/2019, noted above.

9) The authorities in the Food Civil Supplies and Consumer Affairs Department filed and interlocutory application being I.A.(Civil) No. 4280/2019 in said WP(C) No. 9109/2019 for vacation/alteration/modification of the interim stay order dated 06.12.2019, passed in said WP(C) No. 9109/2019 and seeking leave of the Court to pass appropriate order for issuance of regulation promotion to the post of Controller of Legal Metrology, Assam in terms of the recommendation received from the Assam Public Service Commission (APSC) vide letter dated

11.12.2019.

10) Being aggrieved with the illegal approval by the APSC dated 11.12.2019 approving the recommendation of Selection Board being in clear violation of the order of the Court dated 06.12.2019 passed in said WP(C) No. 9109/2019 while the issue was subjudiced before the Court, the petitioner preferred another writ petition WP(C) No. 9459/2019 challenging the said approval of the APSC dated 11.12.2019 as well as the recommendation of the Selection Board recommending the respondent No.7 for promotion to the post of Controller of Legal Metrology, Assam. The ground taken by the petitioner against the said recommendation of the Selection Board was that the authorities concerned denied promotion to him to the post of CLM, Assam because of (i) denial of Vigilance clearance due to non submission of annual property return as on 31.12.2018 in the prescribed format by 31.01.2019 alleging the same to be in violation of the Government Circular No.AAP.237/2013/33 dated 05.02.2014 and (ii) approval for initiating regular enquiry against him was under consideration of the Government as a preliminary enquiry was initiated by the Directorate of Vigilance and Anti Corruption against him while he was serving as Inspector of Legal Metrology at Goalpara pertaining to which the enquiry report was already submitted before the Government.

11) The petitioner also urged that the said recommendation of the Selection Board recommending the respondent No.7 for promotion to the post of Controller of Legal Metrology, Assam was in violation of the Assam Weights and Measures Service Rules, 1981 as amended in the year 1995 and that the petitioner is the senior most Officer of the Legal Metrology Department as per the Gradation List of 2017 and further, the minutes of the Selection Board dated 26.11.2019 found that the petitioner is eligible in all aspects for promotion to the post of CLM, Assam.

12) The Court by order dated 20.12.2019 while issuing notice to the respondents in said WP(C) No. 9459/2019 suspended the approval of the respondent APSC dated 11.12.2019 granting approval for selection of promotion of respondent Sri Nirmal Chandra Taid to the post of CLM, Assam from the rank of Joint Controller of Legal Metrology under the Food, Civil Supplies and Consumer Affairs Department of the State recommended by the Selection Committed in the meeting held on 26.11.2019.

13) In the meanwhile, the Principal Secretary to the Government of Assam in the Food, Civil Supplies and Consumer Affairs Department on 17.12.2019 issued show cause notice to the

petitioner under Rule 9 of the Assam Service (Discipline and Appeal) Rules, 1964 read with Article 311 of the Constitution of India as to why any of the penalties prescribed in Rule 7 of the said 1964 Rules should not be inflicted upon him on the charge of (i) failure to submit Annual Property Return (APR) of the Calendar year 2018 by 31.01.2019 in terms of Government of Assam Circular No.AAP.237/2013/33 dated 05.02.2014 and No. AAP.237/2013/48 dated 04.04.2016 and (ii) though in terms of those two Government Circulars he was required to submit Annual Property Return of the year 2017 by 31.01.2018 but he had submitted his APR vide letter No.CWM/E-1373/88/284/5938 dated 21.12.2018 in the Food, Civil Supplies and Consumer Affairs Department on 29.12.2018 that amounts to not submitting his APR of the year 2017 within 31.01.2018.

14) Being aggrieved with the said show cause notice dated 17.12.2019 issued by the Principal Secretary to the Government of Assam in the Food, Civil Supplies and Consumer Affairs Department while the issues pertaining to non submission of his Annual Property Return of the year 2017 by 31.01.2018 already pending in his aforementioned two writ petitions, that are subjudiced, the petitioner filed WP(C) No. 211/2020 for setting the said show cause notice dated 17.12.2019. The Court after considering the matter by order dated 10.01.2020 while issuing notice to the respondents therein directing the petitioner to file his reply in terms of the said show cause notice dated 17.12.2019 and also to examine the documents but directed the respondents in the Food, Civil Supplies and Consumer Affairs Department, Assam not to proceed with the Departmental Proceeding against the petitioner in terms of the said show cause notice dated 17.12.2019 as WP(C) No. 9109/2019 as well as WP(C) No. 9459/2019 preferred by the petitioner are already pending for adjudication.

15) During the deliberation of the matter, pursuant to the order of the Court the official respondents in the Food Civil Supplies and Consumer Affairs Department and the APSC placed all the relevant records pertaining to the Departmental Promotion Committee's decisions dated 27.07.2019 and 26.11.2019 regarding promotion of the private respondent Nirmal Chandra Taid to the post of Controller of Legal Metrology and the consideration as well as approval of the APSC in that regard.

16) On perusal of the records, it was found that though the private respondent No. 3 Sri Biswaranjan Samal, IAS, the Principal Secretary, Food, Civil Supplies and Consumer Affairs Department of the State was not the member of the Selection Board/Committee as constituted

by the Chief Secretary of the State for selection to the post of Controller of Legal Metrology, but he managed to participate in the concerned DPCs for the said promotional post.

17) Moreover, the record also reveals that said private respondent No. 3 prepared the minutes of the concerned DPC promoting the respondent Nirmal Chandra Taid to the post of Controller of Legal Metrology much ahead of the said Selection Committee Meeting held on 26.11.2019. Said respondent No. 3 not only prepared the Minutes promoting the respondent Nirmal Chandra Taid (Pg. 125/126 of the record) specifically stating that "Agenda Note for the Selection Board Meeting to be held on 26.11.2019 at 02:30 P.M." signing the same as on 26.11.2019 by him. It is also seen that Agenda Note was forwarded to the Chief Secretary of the State on 22.10.2019 fixing the meeting on 04.11.2019 at 04:30 P.M. that was approved by the Chief Secretary on 22.10.2019 itself, which was subsequently postponed to 26.11.2019.

18) Though the Court directed the respondent Chief Secretary of the State as well as the Principal Secretary to the Government of Assam, Food, Civil Supplies and Consumer Affairs Department and the respondent No. 3 to clarify in that regard, in their affidavits they did not reply to the same.

19) In the meanwhile, while serving as CLM, Assam, the petitioner, while taking bribe in a trap case, was arrested on 08.07.2022 by the authorities in the Directorate of Vigilance and Anti-Corruption in ACB Police Station Case No. 16/2022 under Section 7 (a) of the Prevention of Corruption Act, 1998 and was detained in custody, who later got bail from an order of this Court dated 24.08.2022 in Bail Application No. 1869/2022.

20) As per the records the date of birth of the petitioner Shashindra Nath Baishya is 23.12.1962 whereas, that of the private respondent Nirmal Chandra Taid is 22.09.1962. Both of them have retired from service on attaining the age of superannuation at the age of 60 years on 31.12.2022 and 30.09.2022 respectively.

21) In view of the above, to proceed with these matters at this stage will be purely on academic interest.

22) In catena of decisions, the Hon'ble Apex Court have held that if in the opinion of the Court the matter is of only academic exercise and would not serve any real purpose in adjudicating the matter, the Court need not undertake to adjudicate such matter.

23) For the reasons above, these writ petitions, WP(C) No. 9109/2019 as well as WP(C)

No. 9459/2019 and WP(C) No. 211/2020 being infructuous, stand dismissed.

24) As a result, the interim order passed earlier on 06.12.2019 in WP(C) No. 9109/2019, order dated 20.12.2019 passed in WP(C) No. 9459/2019 and order dated 10.01.2020 passed in WP(C) No. 211/2020 shall stand vacated.

25) The relevant files/records bearing No. FSA.67/2019 of the State Government in the Food, Civil Supplies and Consumer Affairs Department of the State and No. DP-31/1/2019-20 of the Assam Public Service Commission be returned to the concerned Government Advocate/Standing Counsels, obtaining necessary acknowledgements from them.

JUDGE

Comparing Assistant