

GAHC010142502017



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

Case No. : WP(C)/5925/2017

TAPAN PAUL
S/O LT. SUDHIR CH. PAUL, R/O WARD NO. 1, PO- LALA BAZAR, DIST.
HAILAKANDI, PIN- 788163

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, SOCIAL
WELFARE DEPTT, DISPUR, GUWAHATI-781006

2:DIRECTOR OF SOCIAL WELFARE DEPTT.
UZAN BAZAR
GUWAHATI-03

3:DISTRICT SOCIAL WELFARE OFFICER
HAILAKANDI
ASSAM

4:SRI NAYAN JYOTI BORA
STATISTICAL ASSISTANT
THROUGH THE OFFICE OF DISTRICT SOCIAL WELFARE OFFICER
HAILAKAND

Advocate for the Petitioner : MS.S HUSSAIN, MS.P HAZARIKA,MR.B CHAKRABORTY,MS.P SARMAH

Advocate for the Respondent : , GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri B. Chakraborty

Advocate for the respondents : Ms. A. Talukdar, GA-Assam

Date of hearing : **16.08.2024**

Date of Judgment : **22.08.2024**

JUDGMENT & ORDER

The instant petition filed under Article 226 of the Constitution of India is with the following relief:

“In the premises aforesaid it is therefore prayed that Your Lordship may be pleased to issue Rule calling upon the respondents to show cause as to why;

i. A writ of certiorari shall not be issued for quashing and setting aside the orders dated 10.02.2006 (annexure-12) and 21.02.2006 (annexure-13)

ii. A writ of mandamus shall not be issued directing the respondents to appoint the petitioner to the post of Statistical Assistant held by the respondent no. 4.

Call for records and after hearing the causes shown if any Your Lordships may be pleased to make the rule absolute granting the aforesaid relief and / or pass such further order / orders as Your Lordships may deem fit and proper.”

2. As per the facts projected, the petitioner had participated in recruitment for the post of Statistical Assistant in the Social Welfare Department presently, Women and Child Development Department. It is averred that the name of the

petitioner was forwarded by the Employment Exchange. Pursuant to his offering of candidature, the petitioner was served with a Call Letter dated 20.01.2005 and on 29.01.2005, he had faced the interview. However, according to the petitioner, the select list was not published and it is only after an attempt made under the Right to Information Act, a copy of the select list could be obtained by him. In the said select list dated 27.07.2005, the name of the petitioner is against Sl. No. 5. The case of the petitioner is that while he was deprived of the appointment, the respondent no. 4 was given undue benefit.

3. I have heard Shri B. Chakraborty, learned counsel for the petitioner. I have also heard Ms. A. Talukdar, learned State Counsel.

4. Shri Chakraborty, the learned counsel for the petitioner has submitted that in the select list, the petitioner was placed against Sl. No.5 and one Shri Kanu Das was placed against Sl. No.4. The said Shri Kanu Das was appointed on 10.06.2006. By referring to the minutes of the selection dated 18.08.2005, which is annexed to the affidavit-in-opposition filed by the respondent no. 2, the learned counsel for the petitioner has submitted that so far as the post of Statistical Assistant is concerned, there were 3 vacancies. The minutes have also resolved that the list would remain valid for one year and further vacancies would also be filled up from the said list. He submits that the respondent no. 4 was appointed as Statistical Assistant in the year 2001 on *ad hoc* basis for 1 year or till regularization, whichever is earlier, and he was posted at Algapur. He submits that the said respondent no. 4 was continued in service and vide an order dated 30.12.2004, he was transferred from Algapur to Sonitpur. Subsequently, vide an order dated 10.02.2006, the services of the respondent no. 4 was regularized at Algapur. Thereafter, vide an order dated 21.02.2006, the said respondent no. 4 was transferred. The learned counsel submits that

undue benefit has been given to the said respondent no.4 by which the scope of the petitioner for his appointment has been curtailed. It is submitted that the very fact of regularization of the said respondent no. 4 in the year 2006 would demonstrate that there were vacancies where the petitioner could have been accommodated. He reiterates that as per the minutes of the Selection Committee which has been annexed to the affidavit-in-opposition, there was a stipulation to give appointment from the select list in existing and arising vacancies within a period of one year. He submits that the authorities and the committee were apprised of such a vacancy in which the said respondent no. 4's services have been regularized. The learned counsel for the petitioner also questions the *bona fide* on the part of the respondent authorities in giving undue benefit to the said respondent no. 4 without following the due process of law. He accordingly submits that appropriate directions be issued for setting aside the order of regularization of the services of the said respondent no. 4 as well as his transfer from Borchola in the district of Sonitpur to Algapur in the district of Hailakandi. The petitioner has also prayed for a direction to appoint him in the post of Statistical Assistant held by the said respondent no. 4.

5. *Per contra*, Ms. Talukdar, learned State Counsel has submitted that admittedly, there were only 3 vacancies in Hailakandi district and the petitioner's position was 5th. By referring to the affidavit-in-opposition filed on 31.07.2024, the learned State Counsel has denied the allegation of any *mala fide* or illegality so far as the appointment and regularization of the said respondent no. 4 is concerned. She accordingly submits that the writ petition be dismissed.

6. So far as the respondent no. 4 is concerned, this Court, vide order dated 25.03.2019 had permitted *dasti* service which was accordingly done and in this connection, an affidavit was also filed by the petitioner on 21.01.2020.

7. The claim of the petitioner is based on a select list wherein his position was against Sl. No.5. The claim is made by bringing in the aspect of regularization of the services of the respondent no. 4 who was initially inducted as Statistical Assistant on *ad hoc* basis. Though an attempt has been made to connect the aspect of the recruitment process initiated in the year 2005 and the regularization of the respondent no. 4, the materials available on record do not establish a direct link of the two aspects. Though from the materials available on record, the procedure adopted for regularizing the services of the said respondent no. 4 does not appear to be in strict conformity with the law, a claim to be appointed in the post in which the regularization of the said respondent no. 4 has been done, does not appear to be substantiated.

8. It is trite law that mere empanelment in a select list will not give an indefensible right to be appointed. Admittedly, so far as the district of Hailakandi is concerned, the numbers of vacancies were 3 and the position of the petitioner was 5th. Since the resolution was taken by the Selection Committee that further vacancies would be filled up, the incumbent above the petitioner against serial no. 4 was given the appointment within the validity of the select list which was 1 year. However, it is not the case of the petitioner that any person below the petitioner in the select list has been given an appointment and therefore the regularization of an incumbent who was appointed in the year 2001 cannot be a reason to hold the petitioner to be entitled for appointment.

9. There is another aspect which this Court has noticed. As of today, the petitioner is aged about 54 years and much beyond the entry-level age for Government service. The Court has also noticed that though the recruitment process was of the year 2005, the attempt by the petitioner to extract information under the provisions of the Right to Information Act was only in the

year 2016 which is after more than a decade. Such *laches* on the part of the petitioner to pursue his right in a Court of equity would be a factor which would be against the petitioner.

10. Under the aforesaid discussions and the facts and circumstances, this Court is of the considered opinion that no relief can be granted to the petitioner. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant