



GAHC010004592008

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

Case No. : WP(C)/5210/2008

RAJIB NATH AND ORS.

S/O MUK HESWAR NATH, USHANAGAR, BYE LANE NO.6, WARD NO.1, P.O.
TEZPUR, SONITPUR, ASSAM.

2: SHRI PRANDIP KUMAR SARMAH

S/O SHRI PRADIPT KUMAR SARMAH
VILL. PARBATI NAGAR NEAR SANSKRIT TOL
P.O. TEZPUR
SONITPUR
ASSAM.

3: SHRI MRINAL KUMAR BORAH

S/O SHRI SUREN CHANDRA BORAH
VILL. PARBATI NAGAR
P.O. TEZPUR
SONITPUR
ASSAM.

4: SHRI MANAS JYOTI BORAH

S/O SHRI BEDA KANTA BORAH
VILL. LALMATI
NEAR KUMARGAON L.P. SCHOOL
P.O. TEZPUR
SONITPUR
ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE CHIEF SECRETARY.



2:THE DEPUTY COMMISSIONER

SONITPUR
TEZPUR.

3:THE ADDL. DEPUTY COMMISSIONER

SONITPUR
TEZPUR.

4:THE DIRECTOR OF ACCOUNTS

DEPARTMENT OF FINANCE ESTT-B
STATE OF ASSAM.

5:TREASURY OFFICER

SONITPUR DISTRICT TREASURY
TEZPUR
P.O. 784001.

6:THE COMMISSIONER

NORTHER ASSAM DIVISION
HEADQUARTER AT TEZPUR
P.O. TEZPUR - 784001.

7:THE COMMISSIONER and SECRETARY

DEPARTMENT OF FINANCE ESTT-B
STATE OF ASSAM

Advocate for the Petitioner : MR.B CHETRI P- 1and 3

Advocate for the Respondent : MR. P NAYAK(SC, F.DEPTT.)

Linked Case : WP(C)/941/2017

GAUTAM HAZARIKA and 4 ORS.
S/O. SRI BHABEN HAZARIKA
R/O. USHA NAGAR
BYE LANE NO.9
P.O. TEZPUR
PIN-784001



DIST. SONITPUR
ASSAM.

2: SRI KRISHNA KT. NATH
S/O. SRI SAREN CH. NATH
VILL. LIKHAK GAON
P.O. PITHAKHOWA
PIN-784153
DIST. SONITPUR
ASSAM.

3: MS. MEETALY TAMULY

D/O. LT. PURNA KT. TAMULY
R/O. GHARPARA CHUBURI
WARD NO.16
P.O. TEZPUR
PIN-784001
DIST. SONITPUR
ASSAM.

4: SRI ASHOK KR. BASUMATARY
S/O. LT. NANDA RAM BASUMATARY
VILL. CHAPAGURI
P.O. GHORAMARI
DIST. SONITPUR
ASSAM
PIN-784105.

5: SRI SAROJ KALITA
S/O. SRI RAJANI KALITA
VILL. KALITA GAON
P.O. BIHAGURI
DIST. SONITPUR
ASSAM
PIN-784153.

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE CHIEF SECY.
TO THE GOVT. OF ASSAM
DISPUR
GHY.-781006.

2: THE COMMISSIONER and SECY.

GOVT. OF ASSAM



FINANCE DEPTT.
DISPUR
GHY.-781006.
3:THE DIRECTOR OF ACCOUNTS

DEPTT. OF FINANCE ESTT-B
GOVT. OF ASSAM.
4:THE COMMISSIONER

NORTHERN ASSAM DIVISION
HEADQUARTER AT TEZPUR
P.O. TEZPUR
PIN-784001.
5:THE DY. COMMISSIONER

SONITPUR DIST.
TEZPUR
PIN-78401.
6:THE TREASURY OFFICER

SONITPUR DIST. TREASURY
TEZPUR
PIN-784001.

Advocate for : MR.K K PARASAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM and 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 20.07.2023.

Date of judgment : 19.09.2023.

JUDGMENT & ORDER (CAV)

Heard Mr. B. Chetri, learned counsel appearing for the petitioners in both these writ petitions. Also heard Mr. T. C. Chutia, learned Additional Senior Government Advocate, Assam appearing for the respondent Nos.1, 2, 3, 4 and 6 and Mr. P. Nayak,



learned Standing Counsel, Finance Department, Assam appearing for the respondent No.5. Both these writ petitions are founded on common questions of law and facts and therefore, are being disposed of by this common judgment.

2. The case projected in the writ petitions, briefly stated, is to the effect that the four writ petitioners in WP(C) No.5210/2008 and the five writ petitioners WP(C) No.941/2017 had participated in the recruitment process initiated by the Treasury Officer, Sonitpur for filling up 10 vacant posts of Junior Accounts Assistant and one post of Grade-IV staff in the Sonitpur District Treasury establishment for the year 2007-08. Pursuant to the letter dated 01.02.2007 issued by the Joint Secretary to the Government of Assam, Finance Department granting approval for conducting the recruitment process for filling up the aforesaid posts, the Deputy Commissioner, Sonitpur had written a letter dated 02.06.2007 requesting the Employment Exchanges of Tezpur and Biswanath Chariali to send names of eligible candidates for appointment in the vacant posts of Junior Accounts Assistant and the Grade-IV post. After receipt of the communication from the Deputy Commissioner, Sonitpur the respective Employment Exchanges had apparently forwarded the names of 190 candidates including the present petitioners by maintaining a ratio of approximately 1 : 20. As per the requirement of the provisions of Rule 13 of the Assam Treasury (Establishment) Service Rules, 1993, a Selection Board was constituted and the candidates were asked to appear in a written test held on 28.10.2007. Thereafter, the short-listed candidates were called for viva-voce tests held on 11.03.2008. According to the petitioners, they had fared well in the selection process and therefore, were expecting to get selected. However, the final result of the selection process was not

published. On the contrary, due to interference of the then Minister of Irrigation, Assam, the Commissioner, North Assam Division, Tezpur had instituted an enquiry into the selection process and he had also instructed the Deputy Commissioner, Sonitpur not to make any appointment to the aforesaid posts. On conclusion of the enquiry, the Commissioner, North Assam Division had found various anomalies in the selection process. Consequently, by the order dated 12.11.2008, the selection process was cancelled whereafter, a fresh advertisement dated 29.11.2008 was issued for filling up the aforesaid vacant posts. It was only after the publication of the advertisement notice dated 29.11.2008 that the writ petitioners in WP(C) No.5210/2008 became aware of the decision to cancel the selection process. Accordingly, they had approached this Court by filing the above-mentioned writ petition wherein, the learned Single Judge had passed an interim order dated 12.12.2008 restraining the respondents from taking any further steps pursuant to the advertisement notice dated 29.11.2008. The said interim order is holding the field till today.

3. Assailing the advertisement notice dated 29.11.2008, WP(C) No.941/2017 was instituted by 5 (five) other aspiring candidates after a delay of more than 8 years, contending that the cancellation of the earlier recruitment process as well as the issuance of the fresh advertisement notice, were wholly arbitrary, illegal and hence, liable to be set aside.

4. The respondent No.5 i.e. the Treasury Officer, Sonitpur Treasury has filed affidavit in WP(C) No.5210/2008 *inter-alia* contending that the recruitment process was initiated upon receipt of concurrence from the Finance Department, Assam for



the 10 posts of Junior Accounts Assistant vide Government Order No. FEB.63/06/54 dated 01.02.2007. Thereafter, the process of recruitment was initiated by the then Treasury Officer and the Deputy Commissioner, Sonitpur by calling names from the Employment Exchanges of Tezpur/Biswanath Chariali. As per the statements made in the affidavit, altogether names of 258 candidates were forwarded by the Employment Exchanges for filling up the 10 vacancies. Thereafter, a District Level Committee was constituted as per Rule 13 of the Assam Treasury (Establishment) Service Rules, 1993 and the candidates were asked to appear before written test and viva-voce test. However, no appointment letter was either prepared or issued to any of the candidates. Subsequently, based on an enquiry report prepared by the Commissioner, North Assam Division and the direction issued by the said authority, the Deputy Commissioner, Sonitpur had issued a fresh advertisement notice dated 29.11.2008 for filling up the aforesaid posts.

5. The respondent No.5 in WP(C) No.941/2017 i.e. the Assistant Commissioner serving in the office of the Deputy Commissioner, Sonitpur, has also filed an affidavit in the said writ petition whereby, he has admitted that there were various anomalies and irregularities in the selection process as pointed out in the enquiry report of the Commissioner, North Assam Division, Tezpur and the selection was not based on merit.

6. From the pleadings available on record, it is apparent that there was no advertisement originally issued by the respondents and the process for filling up the 10 vacant posts of Junior Accounts Assistant under the Sonitpur District Treasury was conducted entirely by calling names from the two Employment Exchanges. It

appears that, having noticed the aforesaid fact along with some other anomalies in the recruitment process, an enquiry was instituted through the Commissioner, North Assam Division, who, upon completion of the enquiry process, had submitted his report dated 12.11.2008. The Divisional Commissioner has observed that the Deputy Commissioner, Sonitpur had committed a mistake by conducting the recruitment only by calling names from Tezpur Employment Exchange and Biswanath Employment Exchange without publishing any advertisement. Moreover, the 20 point roster showing the backlog vacancy for SC and ST(H)/ST(P) were also not properly reflected. The relevant portion of the findings and observations made in the enquiry report dated 12.11.2008 are reproduced herein below for ready reference :-

“Whereas the Deputy Commissioner, Sonitpur, Tezpur vide his letter No.STA/Esst/04/06-07/2003 dtd. 02.06.07 requested the Employment Exchanges of Tezpur and Biswanath Chariali to send names of candidates of at least 4 times of the existing vacancies of Jr. Accounts Assistant. But according to the present norms the recruiting authority could ask for 20 twenty candidates for each vacant post from the Employment Exchange. Employment Exchange, Tezpur sent 190 names against 200 names as per norm. The ratio is 1 : 20. It is also seen that norms for notification under Rule 4 signed by the Deputy Commissioner is not found in the file.

1) Govt. of Assam, in the Finance (Esstt) Department vide letter No.FEB.13/2005/25 dtd. 07.07.2007 approved for filling up 1(one) post of Junior Accounts Assistant and Grade-IV 2 (two) nos. after observing all required formalities as per approval accorded by the Finance (SIU) Deptt. Vide their u/o No.FS/2005/2007 dtd. 14/06/07. No intimation has been given to the local Employment Exchange about the said vacant

post – 1(one) of Jr. Account Assistant and 2(two) Nos. of Grade-IV till date and no advertisement has also been issued till date, respectively, thereby violating the Employment Exchange (compulsory notification of vacancies) Act, as well as directions of Hon'ble Supreme Court in the case reported in (2006) 4 SCC.

2) On the other hand, Treasury staffs and Treasury Officer vide note dtd. 23/07/07 at Note Sheet page 12/N and 13/N misleading the Deputy Commissioner to fill up the said vacant 1(one) post of Jr. Accounts Assistant and 2(two) Grade-IV post i.e. 1 Peon + 1 Chowkidar from the successful candidates of the written examination that will be held for selection of Jr. Account Assistant and for Peon and Chowkidar, necessary selection may be made from the same interview of Grade-IV candidates for which selection may be held. The Treasury Asstt. and Treasury Officer vide note dtd. 17/09/07 of Note Sheet page 13,. 17 and 18/N again mised the Deputy Commissioner and issued appointment letter No.STA/Esstt./4/06/0-7/681-689 dtd. 17/09/07 appointing Shri Ghana Kt. Gogoi as Peon in Gohpur Sub-Treasury and Miss Nirala Saikia as Chowkidar in Gohpur Sub-Treasury without informing local Employment Exchange, advertisement, without police verification, without advertisement, violating Supreme Court order and hence attracts punishment under relevant provisions of AFRBM Act, 2005.

3) It is seen that total 208 nos. candidates appeared for the written examination and 70 (seventy) nos. of candidates were called for interview. A list of 12(twelve) nos. application was forwarded by Assistant Director of Employment Exchange, Tezpur vide No.Act 12-13/2007/1899 dtd. 13 July/2007. No mention about intimation to Employment Exchange, Gohpur Exchange which presently functions from Biswanath Chariali.

A list of successful candidates is prepared claimed to be in order of

merit and the ratio is taken as 1 : 6. This is reflected in Treasury Officer note dtd. 20/02/08 at Note Sheet page 22/N. But relaxation is given in respect of S/C candidates as a consequence SC candidate Shri Sanjit Das, SC is deprived of opportunity. It is also not known how many physically handicapped candidates appeared for the said post. Total Present, Absent, General, OBC/MOBC, SC, ST(P), ST(H) is also not known. Physically handicapped candidates could have been in the Merit List.

From the Note sheet at page 9/N, it is seen that out of total post-23 nos. of Jr. Accounts Assistants 13 posts had already been filled up. Vacancy position 10 nos. It is not in the sanctioned post of Tezpur Treasury including Biswanath Chariali, Gohpur and Rangapara Sub-Treasury.

Sri S. Ahmed, Director of Accounts and Treasuries, Assam has signed the Minutes of Selection Committee without calling letters for holding a meeting, formation of selection committee and without the decision of the selection committee meeting headed by Chairman i.e. Deputy Commissioner. Director has accorded approval for filling up of the vacant post of Jr. Accounts Assistant, violating instructions of Govt. The Director of Treasury by approving it has violated the Roster Point of Govt. of Assam Personnel (B) Department Notification No.ABP.84/2003/097 dated 30th Nov/2005 and duly published in the Assam Gazette dtd. 6th December, 2005 and Reservation points, the Reservation Act including 100 and 20 point Roster as per provision of the Assam Service (RVSP) Act Rules framed thereunder. There is no mention about Compassionate appointment, if any. The Director is also liable for punishment under relevant provision of AFRBM Act, 2005.

In view of so many irregularities and omissions and commission and serious violation of Rules and procedure, no order, other than cancellation of the whole process of this recruitment will meet the end of

justice and fair play. Cancellation is also required to maintain transparency of action of the Government machinery. I, therefore, hereby cancel the whole process of recruitment to fill up 10 (ten) Nos. of Jr. Accounts Assistant violation by Govt. Letter No.FEB.63/06/53 dtd. 01.02.2007 and 1(one) No. of Jr. Accounts Assistant sanctioned vide Government letter No.FEB.13/2005/25 dtd. 07.07.2007 for Gorpur Sub-Treasury and Grade-IV staff sanctioned by Govt. vide letter No.FEB.63/06/53 dtd. 01.02.2007 and another 2 (two) Nos. of Grade-IV sanctioned by Govt. vide letter No. FEB.13/2005/25 dtd. 07.07.2007 for which interview was held on 28.1.2007 and 11.03.2007 for Jr. Account Assistant vide calling letter No.STA/ESTT/4/06-07/715-969 dtd. 24.09.2007 and No.STA /ESTT./4/06-07/1143-1209 dtd. 27.02.2008 and No.STA/ESTT./4/06-07/572/626 dtd. 29.08.2007 for Grade-IV.

The Deputy Commissioner, Sonitpur is asked to start the recruitment process afresh immediately by issuing open advertisement by following all Rules and procedure."

7. Assailing the Report dated 12.11.2008, Mr. B. Chetri, learned counsel for the writ petitioners has argued, by placing reliance on the decision of this Court rendered in the case of **The State of Assam Vs. Tafjul Ali** [W.A.No.258/2014], that there was no requirement under the Rules for paper publication of advertisement notice and therefore, the vacancies could have been filled up only on the basis of sponsorship of names from the Employment Exchanges. By relying upon the decision of the Supreme Court in the case of **Chief Executive Officer, Pondicherry Khadi and Village Industries Board and another Vs. K. Aroquia Radja and others** reported in **(2013) 3 SCC 780** Mr. Chetri has further argued that all vacancies under the State Government are required to be filled up through Employment Exchanges. Other

permissible sources of recruitment are to be tapped only if the employment exchange concerned issues a non-availability certificate. Mr. Chetri has also argued that there was no good ground for the authorities to cancel the entire selection process thereby prejudicially affecting the rights of the selected candidates. He has further argued that duly selected candidates, such as the writ petitioners, could not have been denied employment merely at the interference of the Minister who was not connected with the Finance Department. To draw support for his above argument, Mr. Chetri has relied upon and referred to the decisions rendered in the case of **Union of India and others Vs. Rajesh P.U., Puthuvalnikathu and another** reported in **(2003) 7 SCC 285** and **Dipak Babaria and another Vs. State of Gujarat and others** reported in **(2014) 3 SCC 502**.

8. Mr. Chetri has also placed heavy reliance on the decisions of this Court rendered in the case of **Md. Maidul Islam and others Vs. State of Assam and others** reported in **2003 (3) GLR 691** as well as the decision in the case of **Utpal Goswami and others Vs. State of Assam and others** reported in **2015 (2) GLT 1055** to contend that if the basis of cancellation of the selection process is found to be arbitrary and likelihood of bias is noticed, then the Writ Court can issue direction to complete the selection process.

9. By referring to another decision of this Court rendered in the case of **Arabinda Rabha and others Vs. State of Assam and others** reported in **2019 (4) GLT 223** Mr. Chetri submits that even assuming that there was non-inclusion of names of candidates from the reserved category, then also, the list could be rectified by the

Selection Committee or by the State Government having due regard to the *inter-se* merit position of the candidates. Since such an irregularity was curable, hence, it cannot be said that the selection process was liable to be cancelled merely due to failure on the part of the authorities to project the backlog vacancies.

10. By referring to the materials available on record Mr. Chetri further submits that there is sufficient evidence to show that at the relevant point of time, there was no backlog vacancies for SC, ST(P) and ST(H) and therefore, the same could not have been a valid ground for cancellation of the entire selection process. Contending that the petitioners are now over-aged and therefore, have incurred disqualification for appointment in Government jobs, Mr. Chetri has submitted that for the ends of justice, the order dated 12.11.2008 cancelling the selection process be set aside by this Court and a direction be issued to the respondents to complete the selection process and to issue appointment orders to the selected candidates.

11. Responding to the above arguments Mr. T. C. Chutia, learned Additional Senior Government Advocate, Assam has argued that there is no select list ever prepared under the signatures of all the members of the Selection Board nor was the same ever published. Therefore, the petitioners cannot claim any right to be appointed against the vacant posts pursuant to the recruitment process. Mr. Chutia has further argued that the enquiry conducted by the Commissioner, North Assam Division has revealed several anomalies in the selection process which have been highlighted in the enquiry report and therefore, the cancellation of the selection process is completely justified in the facts and circumstances of the case.

12. It is also the submission of Mr. Chutia that after the lapse of nearly 15 years, the selection process itself has lost its validity since, during the intervening period, a large number of new candidates have acquired eligibility to take part in the recruitment process for filling up those posts. Therefore, submits Mr. Chutia, at this point of time, even the impugned advertisement notice dated 29.11.2008 cannot be given effect and the department would have to issue a fresh advertisement for filling up the vacant posts.

13. The learned Standing Counsel, Finance Department, Assam, Mr. P. Nayak, submits that due to the pendency of the aforesaid proceeding and the stay order operating in WP(C) No.5210/2008, the 10 posts of Junior Accounts Assistant have remained vacant for more than 15 years thereby, causing serious difficulties in the functioning of the department. Under the circumstances, the learned departmental counsel has submitted that the writ petitions be dismissed and the department be allowed to float a fresh advertisement for filling up the vacant posts. It is also the submission of Mr. Nayak that if necessary the petitioners can also take part in the selection process by seeking relaxation of their upper age. Mr. Nayak submits that if proper applications seeking age relaxation is submitted by the writ petitioners the same will be considered by the competent authority in accordance with law.

14. I have considered the submissions made at the bar and have also gone through the materials available on record. The core question that would arise for decision of this Court in the present proceedings is as to whether, the enquiry report dated 12.11.2008 discloses sufficient and justifiable ground for cancellation of the

selection process. In order to answer the aforesaid question, the grounds stated in the enquiry report dated 12.11.2008 would call for a brief discussion.

15. As can be noticed from the foregoing paragraphs, one of the major grounds, as reflected in the report dated 12.11.2008 submitted by the Commissioner, North Assam Division, finding fault with the recruitment process was that the recruitment process was conducted only on the basis of names sponsored by the two Employment Exchanges and without publishing any advertisement notice. The learned counsel for the writ petitioners has strenuously argued that recruitment process conducted only on the basis of names forwarded by the Employment Exchange was permissible in the eye of law and there would be no requirement for publishing advertisement in the newspaper for carrying out such recruitment if sufficient names are available through the Employment Exchange.

16. The requirement of issuing advertisement notice in newspaper and giving wide publicity of such recruitment process on radio, television and employment news bulletins over and above considering candidates sponsored by Employment Exchanges have been held by the Supreme Court to be in consonance with the principles of fairness as envisaged under Articles 14 and 16 of the Constitution of India. The aforesaid issue fell for consideration before the Hon'ble Supreme Court in the case of **Excise Superintendent, Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and others** reported in **(1996) 6 SCC 216** wherein the following observations have been made in paragraph 6 which are reproduced herein below :-

“6. Having regard to the respective contentions, we are of the view that

contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidates are deprived of the right to be considered for appointment to a post under the state. Better view appears to be that it should be mandatory for the requisitioning Departments for selection strictly according to seniority and reservation as per requisition. In addition the appropriate Department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

17. From the above decision of the Supreme Court it would be evident that in addition to calling names from Employment Exchanges, the department would be under obligation to call for names by newspaper publication having wider circulation.

18. The Apex Court, in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** reported in **(2006) 4 SCC 1**, had quoted with approval, the observations made in the case of **Union Public Service Commission vs. Girish Jayanti Lal Vaghela** [(2006) 2 SCC 482] on the requirement of issuing advertisement for filling up vacancies wherein, it has been held that any regular appointment made to a

post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates gets a fair chance to compete, would violate the guarantee enshrined under Article 16 of the Constitution.

19. From a careful examination of the departmental records produced by the learned Government Advocate, Assam, I find that by the communication dated 01.02.2007 addressed to the Deputy Commissioner, Sonitpur the Joint Secretary to the Government of Assam, while conveying the Government's approval for filling up the Grade-III and Grade-IV posts in the District Treasury/Sub-Treasury as per existing rules and procedures, had further instructed that the posts should be filled up in compliance with the AFRBM Act, 2005, the Employment Exchanges (Compulsory Notification of Vacancies) Act, the Reservation Act and all other Rules/procedures/formalities as well as the directions of the Hon'ble Supreme Court in the reported case (2006) 4 SCC. From the communication dated 01.02.2007 it is apparent that the Deputy Commissioner, Sonitpur was asked to comply with the provisions of the relevant Rules including the decision of the Supreme Court rendered in (2006) 4 SCC. As noted above, in the decision of the Supreme Court, it has been held that publication of newspaper advertisement was mandatory and the failure to do so would violate the guarantee enshrined under Article 16 of the Constitution. If that be so, there can be no doubt or dispute about the fact that in addition to calling for names from the Employment Exchanges, the Deputy Commissioner, Sonitpur was also required to publish advertisement notice in the newspaper which he had evidently failed to do in this case.



20.

“35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board

etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

21. From the aforesaid decision of the Supreme Court it is evident that no appointment, be it temporary or on ad-hoc basis, can be made by the State without inviting applications from all eligible candidates by issuing advertisement notice as such a measure would fail to meet the requirement of Articles 14 and 16 of the Constitution of India. Even if the recruitment process is conducted by inviting names from the Employment Exchange, even then, the recruiting agency would be under an obligation to issue advertisement notice published in the newspaper inviting applications from the eligible candidates and hold a fair selection process so as to fill up such vacancies. As such, this Court is of the considered opinion that the Commissioner, North Assam Division was wholly justified in finding fault with the recruitment process due to non-publication of advertisement notice. To that extent, the observations made in the Report dated 12.11.2008 cannot be held to be arbitrary or illegal.

22. In so far as the other allegations made in the report dated 12.11.2008 pertaining to non-fulfillment of the mandate of reservation quota as well as the quota for physically handicapped candidates is concerned, although the petitioners'

counsel has submitted that such findings were factually incorrect, yet, materials available on record are insufficient for this Court to take a concrete view on these issues on either side. Be that as it may, since there is no doubt or dispute about the fact that the recruitment process was initiated without publishing any advertisement notice, hence, in view of the law laid down by the Supreme Court as discussed herein above, this Court is of the opinion that, the recruitment process was rightly found to be anomalous and accordingly, cancelled by the departmental authorities. There is no good ground for this Court to interfere with the report dated 12.11.2008.

23. In the decision rendered in the case of **Tafjul Ali** (*supra*) cited by Mr. Chetri, the Division Bench of this Court had relied upon the decision of the Supreme Court rendered in the case of **Chief Executive Officer, Pondicherry Khadi and Village Industries Board and another Vs. K. Aroquia Radja and others** reported in **(2013) 3 SCC 780** wherein, it was held that filling up of vacancies through Employment Exchanges as the principal mode of recruitment was permissible. Other permissible sources of recruitment were to be tapped only if the Employment Exchange concerned issued a non-availability certificate. However, it will be significant to note herein that the aforesaid decision of the Supreme Court was rendered in the light of the Office Memorandum dated 18.05.1998 issued by the Government of India permitting such a recourse in case of vacancies arising under the Central Government offices/establishments. The Office Memorandum had provided that such vacancies were not to be notified but to be filled up through Employment Exchanges alone. But there is no such Office Memorandum applicable in the present case. The aforesaid decision of the Supreme Court would, therefore, have to be

treated as having been rendered in the facts of that case. As such, the said decision would not have any relevant bearing in the present case.

24. In the case of **Md. Maidul Islam and others** (*supra*) relied upon by the petitioners' counsel, there was a select list published by the authorities and the writ petition seeking appointment on the basis of the said select list was dismissed on the ground that the select list had expired during the pendency of the writ petition. It was in such fact situation that a writ of mandamus was issued by the Court. In the instant case, as has been noted herein above, no select list containing the name of selected candidates had ever been published by the recruiting agency. Therefore, the ratio laid down in the case of **Md. Maidul Islam** (*supra*) will not have any application in the facts of the present case.

25. In the case of **Utpal Goswami and others** (*supra*) relied upon by Mr. Chetri, it is no doubt correct that the learned Single Judge had held that the recruitment process, which was cancelled after holding the interview and before declaration of results, was bad in law since no valid justification for cancellation of the selection process was offered by the parties. That was a case where the selection process was cancelled on the likelihood of bias on account of the fact that relatives of the Member-Secretary of the Selection Board was a candidate and wife of an employee was entrusted with the duty of printing and stitching of question papers for the written examination. On a careful reading of the decision rendered in the case of **Utpal Goswami and others** (*supra*) this Court finds that the said decision was rendered in the peculiar facts and circumstances of that case and the same does not lay down

any principle of universal application which can be followed in the present case.

26. Likewise, in the case of **Arabinda Rabha and others Vs. State of Assam and others** reported in **2019 (4) GLT 223** relied upon by the petitioners' counsel, the only issue was pertaining to the question of non-inclusion of meritorious reserved category candidates. After considering the facts and circumstances of the case, the learned Single Judge had held that the same alone cannot be a ground for setting aside the recruitment process. However, in the present case, the recruitment process was cancelled on multiple grounds of irregularities including non-publication of advertisement notice. Therefore, the decision in the case of **Arabinda Rabha and others** (*supra*) is distinguishable on facts.

27. In the present case, this Court finds that the recruitment process itself was based on a totally non-transparent basis and without issuing any advertisement despite the categorical instruction of the Government by the communication dated 01.02.2007 requiring the authorities to comply with the directives of the Supreme Court in this regard. Failure to comply with such directive of the Government, in the opinion of this Court, went into the root of the matter thereby incurring a fatal defect in the recruitment process which was not curable in nature. Therefore, the decisions relied upon by the petitioners' counsel, in the opinion of this Court, would not be of any assistance to them in the facts and circumstances of the case.

28. It is no doubt correct a recruitment process having been initiated where the petitioners had participated, a legitimate expectation may be entertained by the participants including the writ petitioners of being selected and appointed in the

vacant posts. Under the circumstances, if the recruitment process is cancelled in an arbitrary and whimsical manner, then the same would undoubtedly be open to judicial review by the Court under Article 226 of the Constitution of India. However, what is also to be noted herein is that law is well settled that legitimate expectation is only a facet of Article 14 of the Constitution which protects the citizens from arbitrary action on the part of the State or its instrumentalities and the same by itself does not give rise to an enforceable right. [See **Ram Pravesh Singh & Ors. v. State of Bihar & Ors. (2006) 8 SCC 381** and **State of West Bengal & Ors. Vs. Niranjana Singha (2001) 2 SCC 326**].

29. In the present case, the recruitment process had been cancelled by the authorities after conducting a thorough enquiry into the matter by a responsible officer who had submitted a detailed report recording his findings. Nothing has been pointed out before this Court to establish that the findings were perverse. If that be so, it cannot be said that the recruitment process has been cancelled in an arbitrary and whimsical manner.

30. What is also to be noted herein is that after examination of the departmental record, this Court finds that not to speak of publishing any select list, there is no select list of candidates whatsoever, which has been signed by all the members of the board. In other words, there is no select list of successful candidates available on record. What is available on record is nothing but a list of 11 candidates under the signature of only one of the members of the selection committee i.e. the Director of Accounts and Treasuries against whom, there are serious allegations of commission of

malpractices. The said list or the signature affixed therein also does not contain any date. The other three members of the selection committee including the Deputy Commissioner, Sonitpur, who was the Chairman of the Selection Committee, had not put his signature on the aforesaid list. Therefore, the said list cannot be treated as a valid select list of candidates prepared on merit basis for making appointments for filling up the aforesaid vacancies. Under the circumstances, this Court is of the opinion that there is no right of the petitioners which can be enforced in these writ petitions.

31. It is to be noted herein that although the recruitment process was initiated way back in the year 2007 and the report of the Commissioner, North Assam Division was submitted on 12.11.2008, the five writ petitioners in WP(C) No.941/2017 had approached this Court by filing the writ petition after a lapse of nearly 10 years and the explanation for such delay, as furnished in the writ petition, is found to be completely unconvincing. Therefore, WP(C) No.941/2017 is also hit by principle of delay and laches and hence, liable to be dismissed on such count as well.

32. For the reasons stated herein above, these writ petitions are held to be devoid of any merit. The same are accordingly dismissed.

33. Before parting with the record, this Court deems it appropriate to observe that if a fresh advertisement is issued by the concerned authorities for filling up the vacant posts, it will be open for the writ petitioners to seek age relaxation so as to participate in the said process, if so advised. It is made clear that if such application seeking age relaxation is made by any of the writ petitioners, by furnishing proper justification, the



same shall be objectively dealt with by the authorities in the light of the relevant Rules and regulations and appropriate order be passed therein before commencement of the selection process.

Writ Petitions stands closed.

The parties to bear their own cost.

Records be returned back.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant