

GAHC010302352019



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

Case No. : WP(C) 9109/2019

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

VERSUS

1: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 the Petitioner : MR. P K GOSWAMI
Advocate for the Respondent : SC, APSC

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

ORDER

06-12-2019

Heard Mr. P.K. Goswami, learned Senior counsel with Mr. S.N. Sarma, learned Senior counsel assisted by Mr. K. Kalita, learned counsel for the petitioner. Also heard Mr. S.S. Roy, learned State counsel appearing for the respondent Nos. 1, 5 and 6; Mr. S. Chamaria, learned counsel for the respondent Nos. 2, 3 and 4; Mr. N. Dutta, learned Senior counsel assisted by Mr. M. Das, learned counsel for the respondent No.7 and Mr. G. Choudhury, learned Standing counsel, APSC appearing for the respondent No. 8.

2. The learned counsel for the parties have advanced elaborate arguments on the interim

prayer.

3. The subject-matter of challenge in this writ petition is the Notification No. FSA/67/2019/152 dated 04.12.2019, whereby, the respondent No. 7 has been promoted temporarily to the post of Controller of Legal Metrology (CLM), Assam under Regulation 4(d) of the Assam Public Service Commission (Limitation and Functions) Regulation, 1951 ("the Regulation, 1951", in short) w.e.f. 04.12.2019. The notification has further indicated that it has become necessary in the interest of public service to make officiating promotion under the Regulation 4(d) of the Regulation, 1951 since prior consultation with the Assam Public Service Commission ("the Commission", in short) is likely to cause delay and the same is communicated for the Commission's early recommendation for early regularization of the promotion.

4. Both the petitioner and the respondent No. 7 are members of the Assam Legal Metrology Service, whose conditions of service are regulated by the Assam Legal Metrology Service Rules, earlier known as Assam Weights and Measures Service Rules ("the Service Rules", in short). Both of them were promoted to the post of Joint Controller of Legal Metrology by a notification dated 03.03.2016. By the said notification dated 03.03.2016, the petitioner was also allowed to hold the current charge for the post of Controller of Legal Metrology, Assam. In the final Gradation List of the Gazetted Officers of Legal Metrology, published by a notification dated 05.09.2017, the petitioner has been shown senior to the respondent No. 7 in the cadre of the Joint Controller of Legal Metrology.

5. The case projected on behalf of the petitioner is that (i) the petitioner belongs to the Scheduled Caste category; (ii) the petitioner was appointed as Inspector of Weights and Measures, now known as Legal Metrology, on 08.07.1988 and thereafter, was promoted to the next higher post of Assistant Controller of Legal Metrology on 05.01.2011; (iii) the social status of the petitioner was subject-matter of challenge in WP(C) No. 5684/2010 but by an order dated 22.11.2010, the said writ petition was dismissed with the observation in the order that the petitioner belongs to the Scheduled Caste category; (iv) after the petitioner's promotion to the post of Joint Controller of Legal Metrology on 03.03.2016, the same was challenged in WP(C) No. 1428/2016, which stood dismissed on withdrawal on 16.09.2016; (v)

based on a complaint, an enquiry was carried out by the Department as regards the Scheduled Caste status of the petitioner, but the same was culminated with an enquiry report dated 11.11.2016 of the respondent No. 4 with the observation that there was no reason to suspect the genuineness of the Caste Certificate of the petitioner; (vi) a departmental proceeding was initiated against the petitioner on 30.08.2017 but the same was concluded with his exoneration on 05.03.2018; and (vii) the petitioner was removed from the current charge of Controller of Legal Metrology on 26.07.2017 but on 30.11.2018, he was again allowed to hold the current charge of the said post. A verification process as regards the petitioner's Caste Certificate is still going on before the State Level Screening Committee since a long time.

6. Being the senior-most officer, the petitioner instituted a writ petition, WP(C) No. 2506/2019, seeking, inter-alia, directions to promote him to the post of Controller of Legal Metrology in terms of the Gradation List of 2017 and to conclude the Caste verification proceeding within a specified time. The said writ petition was disposed of on 11.04.2019 with the direction to hold the process of selection to the post of Controller of Legal Metrology within a period of 2 (two) months from the date of receipt of the certified copy of the order. The petitioner was also allowed to hold the post of Controller of Legal Metrology in terms of the notification dated 30.11.2018 and to continue in the said post till appropriate order is issued for promotion as indicated by that order. When the process did not complete with the stipulated time period, Contempt Case(C) No. 385/2019 is instituted at his instance.

7. In view of the aforesaid facts, it is contended that (i) when regular promotion in terms of the relevant Service Rules has been directed, the respondent authority could not have resorted to Regulation 4(d) of the Regulation, 1951; (ii) the list prepared by the DPC, without being approved by the Commission in terms of the Rule 13 (7) of the Service Rules, cannot be termed a select list; (iii) with no disciplinary proceeding pending against the petitioner, the case of the petitioner should have been considered for promotion and he has been unjustly denied; (iv) on the basis of the Minutes of the DPC meeting held on 04.12.2019 handed over to the petitioner only yesterday, it is submitted that merely on the ground that Annual Property Returns (APR) was not submitted by the petitioner, the petitioner could not have

been kept out of the purview of promotion as Rule 13 of the Service Rules makes it incumbent on the part of the Selection Board as well as the Appointing Authority to furnish all the relevant documents and information or required by them. The petitioner contends that the APR for 2018 has been submitted by him on 28.01.2019. Thus, before holding the petitioner ineligible for promotion, the respondent authority should have made endeavour to get the correct information; and (v) in any view of the matter, the Office Memorandum dated 05.2.2018 could not have precedence over the Service Rules governing the matter of promotion.

8. Mr. Chamaria, referring to the Minutes of the DPC meeting held on 26.11.2019, has submitted that the petitioner has been found ineligible on two grounds, firstly, the petitioner has not submitted his APR as on 31.12.2018, and secondly, a preliminary enquiry was initiated by the Directorate of Vigilance and Anti-Corruption Department against the petitioner in respect of his service tenure as Inspector of Legal Metrology at Goalpara. Mr. Chamaria, further submits that the respondent No. 7 has already taken over the charge of the post on 04.12.2019 and as a consequence, the current charge of the petitioner has been withdrawn by a consequential notification.

9. Mr. Dutta, learned Senior counsel has also submitted that the respondent No.7 has already joined in the post of Controller of Legal Metrology on 04.12.2019 itself. He further submits that in case of urgency, it is well within the domain of the Appointing Authority to promote a person on officiating basis under Regulation 4(d) of the Regulation, 1951, even when the process for regular promotion is on the verge of completion. In view of non-submission of the Annual Property Returns by the petitioner which is due to his own action, the petitioner has got himself disqualified to be considered for promotion to the post of Controller of Legal Metrology. He further submits that as the Minutes of the DPC is not challenged, no interim relief can be granted at this stage to the petitioner because in view of the non-submission of the APR, there has been a question mark in the integrity of the petitioner in view of the Office Memorandum dated 05.02.2014.

10. In view of the facts, noted above, projected by the learned counsel for the parties, this court is of the opinion that the matter requires a detail examination.

11. Issue notice, returnable by **20.01.2020**.

12. As all the respondents have entered appearance in the matter, no formal notice need to be issued to the respondents. The petitioner shall, however, serve requisite number of extra copies of the writ petition to the learned counsel for the respondents within 3 (three) days.

13. A number of issues have been raised by the parties. Both the petitioner as well as respondent No. 4 have been found eligible for the single post of Controller of Legal Metrology, which is the highest post in the Legal Metrology Department. It is also noticed that in terms of the order passed by this Court in the writ petition, WP(C) No.2506/2019, the petitioner was allowed to hold the post of Controller of Legal Metrology and to continue in the said post till appropriate order is issued for promotion in the manner indicated therein. The purport of the said order dated 11.04.2019 is that the respondent authorities are to hold the DPC for regular promotion to the post of Controller of Legal Metrology and till such process is culminated in terms of the Service Rules holding force, the petitioner is to be allowed to hold the current charge of the post of Controller of Legal Metrology. Such arrangement is to continue till the conclusion of the process of the regular promotion. As has been noted above, the service tenure of the petitioner as Inspector was from 1988-2011. It transpires from the Minutes that as on date, no regular enquiry is pending against the petitioner. It also transpires that the post of Controller of Legal Metrology was vacant when the petitioner was allowed to hold the current charge of Controller of Legal Metrology on 26.07.2017, meaning thereby, the post of Controller of Legal Metrology was vacant at least since 26.07.2016. When the process of regular promotion is on verge of completion with the DPC holding its meeting on 26.11.2019, the impugned notification dated 04.12.2019 has been issued giving officiating promotion to the respondent No.7 by resorting to Regulation 4(d) of the Regulation, 1951 by making a departure from the regular process of promotion already undertaken in terms of the Service Rules, which prima facie not in consonance with the order dated 11.04.2019. The DPC has taken note of some events of a much earlier date which has not resulted into any regular enquiry as on date. There are also disputed versions about the submission and non-submission of the APR by the petitioner.

14. Considering the above facts that have emerged on date, pending further consideration of the issues involved in this writ petition, it is provided that till the returnable date, the impugned notification dated 04.12.2019 shall remain suspended. As a corollary, the petitioner shall continue in terms of the earlier order dated 11.04.2019 passed in WP(C) No. 2506/2019.

List this matter on **20.01.2020**.

JUDGE

Comparing Assistant