

**Judgement Date : 11/08/2015**

**Case No : WP(C) 3276/2013**

**Utpal Jyoti Borah & Ors –vs- SOA & Ors**

BEFORE

HON'BLE MR JUSTICE UJJAL BHUYAN

Heard Mr B D Konwar, learned Senior Counsel for the petitioners, Ms A Verma, learned Standing Counsel, Finance Department and Mr R K Talukdar, learned Standing Counsel for the Assam Public Service Commission (APSC).

2. 29 (Twenty-nine) petitioners have joined together and have instituted the present common proceeding seeking directions to the respondents to appoint them in the post of Assistant Accounts Officer in the Directorate of Accounts and Treasuries, Assam (respondent No. 2), against available vacancies as per select list dated 03.11.2000 and for that purpose, to extend the validity of the select list.

3. Case projected in the writ petition is that an advertisement was issued by the Assam Public Service Commission (APSC) on 12.03.1999 inviting applications from eligible candidates for recruitment to the post of Assistant Accounts Officer in the Assam Accounts Service under the respondent No. 2. The advertisement disclosed that the number of vacancies were 119 and anticipated vacancies were 75.

4. Being eligible, petitioners responded to the said advertisement and offered their candidature. Written test was held, whereafter, viva voce was conducted by the APSC.

5. APSC published a select list dated 03.11.2000, recommending as many as 208 candidates in order of merit. APSC also published another list of 208 candidates in order of merit on the same date, i.e., on 03.11.2000 for future vacancies. In respect of physically disabled candidates, APSC published a separate select list of 27 on 03.11.2000 and another list of 27 on the same date for future vacancies.

6. Names of petitioner Nos. 1 to 11 appeared in the select list against future vacancies at Serial Nos. 162, 100, 99, 156, 116, 120, 124, 132, 114, 138 and 139. Names of petitioner Nos. 12 and 13 appeared at Serial Nos. 12 and 18 of the select list for physically disabled persons against future vacancies.

7. There is no averment in the writ petition regarding selection of petitioner Nos. 14 to 29 in any of the select lists.

8. The select lists were extended from time to time. Validity of the select lists was finally extended upto 03.11.2006. During this period, all the 208 recommended candidates from the select list dated 03.11.2000 were appointed. So also, 27 candidates from the list of physically disabled candidates were appointed. In addition, 65 candidates from the select list dated 03.11.2000 for future vacancies were appointed. Thus, a total of 300 appointments were made (208 + 27 + 65 = 300).

9. According to the petitioners, there were still some vacancies which could have been offered to the petitioners. Therefore, during the validity of the select lists that was extended, petitioners approached this Court by filing WP(C) No. 8633 of 2003. The said writ petition was disposed of on 31.10.2009, with a direction that if the select lists were in force or were sought to be extended and the respondents intended to make further appointments therefrom, such appointments should be made strictly in order of merit of the candidates. It was, however, clarified that it was left to the discretion of the respondents to take a decision in the matter in accordance with law and it should not be understood that any mandamus was issued for appointment of the petitioners.

10. It is stated that alleging non-compliance of such direction a contempt petition has been filed before this Court, which is stated to be pending.

11. Petitioners had approached respondent No. 2 as well as other authorities including Parliamentary Secretary, Finance, seeking their appointment on the strength of their selection for future

vacancies. Representation was also submitted before the respondent No. 2 on 01.04.2013, requesting the authority not to issue fresh advertisement for filling up available vacancies and instead to fill up such vacancies from the select lists dated 03.11.2000, as extended for future vacancies. Since there was no response, present writ petition has been filed.

12. This case has remained pending at the motion stage for quite some time. In the meanwhile parties have exchanged affidavits.

13. In the affidavit filed by respondent No. 1, it is stated that APSC published select list dated 03.11.2000 of 208 candidates according to their merit. APSC also published another list of 208 candidates for future vacancies along with a list of 27 physically disabled candidates. It is stated that all the candidates from the merit list and from the list of physically disabled candidates were appointed. Out of 208 candidates recommended for future vacancies, 67 appointments were made. APSC had extended the validity of the list up to 03.11.2006 vide letter dated 21.02.2006. The remaining candidates from the list prepared for future vacancies could not be appointed due to non-availability of vacancies at that point of time. Some posts of Assistant Accounts Officer had fallen vacant in December 2006 because of promotion of Assistant Accounts Officer to Deputy Accounts Officer. But because of non-extension of the validity period of the select list by the APSC further appointments from the said list could not be made.

14. Petitioners have filed reply affidavit. It is stated that some posts of Assistant Accounts Officer had fallen vacant since 2006 due to promotion of the incumbents but because of non-extension of the validity of the select list beyond 03.11.2006, appointments could not be made therefrom. Petitioners have contended that on previous occasions, the State had made request to the APSC and on the basis of such request validity of the select list was extended. It was not that APSC had extended validity of the select list on its own, but this time, there was no request made by the State. Respondents have not followed the order of this Court dated 31.10.2009 in letter and spirit. Since petitioners had approached this Court in the previous round of litigation during the validity of the select list, their claim would survive and is required to be considered on merit by the respondents.

15. Mr Konwar, learned Senior Counsel for the petitioners has elaborately taken me to the various documents placed on record and submits that there is no justifiable reason for non-extension of validity of the select list and in not considering the appointment of the petitioners. He submits that in the light of the direction of this Court dated 31.10.2009, respondents cannot take the plea of expiry of the validity period of the select list to decline appointment to the petitioners. In fact, in the order dated 31.10.2009, this Court had clarified that the direction was issued for the reason that petitioners had approached this Court at a point of time when the select list was valid. In such circumstances, Court may consider issuing necessary direction for appointment to the petitioners, who have been patiently waiting seeking justice for almost 16 years and it would be wholly unfair to deny them consideration at this stage when most of them have become over-aged for public employment.

16. Per contra, Ms Verma, learned Standing Counsel, Finance Department, submits that the select list published in the year 2000 cannot be extended for an indefinite period. She submits that respondents had already shown considerable accommodation to the recommended candidates by extending the validity of the select list for 6 (six) years upto 03.11.2006. Thereafter, select list has not been extended. She submits that following the order of this Court, a speaking order was passed by the respondent No. 2 on 17.08.2010, holding that since select list is no longer valid appointment of the persons named in the select list that too for future vacancies would no longer be possible. She submits that respondents have taken a conscious decision not to extend the validity of the select list considering the fact that a large number of persons must have acquired eligibility for the post in question in the meanwhile. Confining appointment to the recommended candidates from the select list dated 03.11.2000 would cause prejudice to the candidates, who have acquired eligibility subsequent thereto

and would be violative of Article 14 of the Constitution of India. She submits that there is no merit in the claim of the petitioners and therefore, the writ petition should be dismissed.

17. Submissions made by learned counsel for the parties have been considered.

18. From the submissions made and from the materials available on record, certain undisputed facts can be culled out as under:-

1) Pursuant to APSC advertisement dated 12.03.1999, for 119 vacancies in the post of Assistant Accounts Officer and 75 anticipated vacancies, select list was published by the APSC on 03.11.2000.

2) Select list comprised of 208 candidates.

3) Another select list also dated 03.11.2000 was published comprising of 208 candidates for future vacancies.

4) A select list dated 03.11.2000 of 27 candidates was published for physically challenged candidates; another list of 27 candidates was also published for future vacancies for physically challenged candidates.

5) According to the petitioners as per pleadings, names of petitioner Nos. 1 to 11 were included in the select list for future vacancies. Names of petitioner Nos. 12 and 13 appeared in the select list of physically challenged candidates for future vacancies.

6) There is no mention about selection of petitioner Nos. 14 to 29 in any list.

7) Select list dated 03.11.2000 was given extensions on 6 (six) occasions finally up to 03.11.2006.

8) During the subsistence of the select list as well as during the extended validity of the select list, a total of 300 appointments were made therefrom.

19. Having noticed the admitted facts as stated above, the claim of the petitioners may now be examined.

20. During the validity period of the select list as extended, petitioners had approached this Court by filing a writ petition. This Court vide order dated 31.10.2009, directed the respondents that in case the select list was in force or was sought to be extended further and the respondents intended to make further appointments therefrom, they should do so by scrupulously following the merit position of the candidates. This Court being fully conscious of the situation, therefore thought it appropriate to mention in the order itself that such direction was issued because the writ petition was filed at a point of time when the select list was valid with further clarification that such direction should not be construed to be binding on the respondents to appoint the petitioners and that the matter was left to the discretion of the respondents to decide in accordance with law.

21. After this order, respondent No. 2 has passed a speaking order on 17.08.2010, stating that the select list has not been revalidated and since it is no longer valid, appointment of the persons named in the select list would no longer be possible. This order is not under challenge.

22. It is a settled proposition that merely because name of a candidate appears in the select list, he cannot claim appointment as a matter of right on the basis of such selection. The Apex Court in a catena of judgments has made it abundantly clear that a person whose name appears in the select list does not acquire any indefeasible right of appointment. He acquires no vested right of appointment. In the present case, names of petitioners Nos. 1 to 13 are in the select list for future vacancies and not in the select list for the actual vacancies. Further, petitioner Nos. 14 to 29 are not selected at all. The legal position is further clear that the moment the posts advertised are filled up the select list would get exhausted. It is another matter that in the present case the respondents had made appointments beyond the notified vacancies, but the same cannot be a ground to confer a right to the petitioners to a similar course of action.

23. Regarding extension of validity of the select list, it is also a settled position that no mandamus can be issued directing extension of the validity of the select list. In any case, for a thing or a list to be extended it must be subsisting. A thing or a list which is not in existence or in subsistence cannot be extended. The validity of the select list had expired way back on 03.11.2006. More than 8

(eight) years have gone by since then. No direction can be issued at this point of time to extend the validity of the select list and to consider appointment of the petitioners based thereon. Any such direction will be violative of the right to equality of all the candidates, who have acquired eligibility in the meanwhile.

24. For all the aforesaid reasons, this Court is of the unhesitant view that the writ petition lacks merit. The same is accordingly dismissed.

25.No costs.