
(2001) 09 GAU CK 0052

In the Gauhati High Court

Case No : Writ Appeal No's. 400 and 523 of 1999 in Civil Rule No. 5055 of 1995

Abani Kumar Goswami and Others

APPELLANT

Vs

Assam Public Service Commission and Others

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Assam Finance Service Rules, 1963 — Rule 4, 5(2), 6, 6(4), 9
Assam Public Service Commission (Procedure and Conduct of Business) Rules, 1986 —
Rule 41, 42, 43, 48
Constitution of India, 1950 — Article 1, 14, 16(1)

Citation : (2001) 3 GLT 377

Hon'ble Judges : J.N. Sharma, J;D. Biswas, J

Bench : Division Bench

Advocate : A.K. Bhattacharyya, B.K. Singh, A. Kalita, A. Bhattacharyya, K.N. Chowdhury and P. Bhowmick, for the Appellant; A. Hazarika, K.N. Chowdhury, T.C. Chutia, C. Choudhury, A.K. Bhattacharyya, B.K. Singh and K.K. Bhattacharyya, for the Respondent

Judgement

J.N. Sarma, J.—The brief facts are as follows: A writ application was filed by nine persons being Civil Rule Nos. 5055 of 1995. Their case was that they are working in different posts in the Finance Department, Govt. of Assam and at the point of time the tenure of their service in the said Department was more than five years (see para 1 of the writ application). It was also claimed that all of them had the qualification to be appointed/promoted as Finance & Accounts Officer/Treasury Officer/Deputy Director-Audit in Class-I Grade-III cadre of Assam Finance Service.

2. An advertisement was issued on 17.7.93, which amongst Ors. was published in the Assam Tribune inviting application for 18 posts of Finance & Accounts Officer/Treasury Officer/Deputy Director-Audit (LF) in Class-I, Grade-III cadre of Assam Finance Service in the scale of pay as mentioned thereon. The break up was General 11 + Reserved 7. That copy of the advertisement was annexed to the writ application as Annexure-I. In response to the aforesaid advertisement the Petitioners and Ors. submitted application. The Assam Public Service

Commission (hereinafter referred to as the "Commission") also conducted a written examination on 22nd and 23rd October, 1994. On the basis of the written examination the Commission called 89 successful candidates including the Petitioners for oral interview. The oral interview was held on different dates i.e., on 6th, 7th, 10th, 11th and 12th July, 1995.

3. The Commission did not publish the select list for more than one year. It is the case of the Petitioners which is also admitted by the State of Assam that after the advertisement was made some more posts fell vacant and under the circumstances, the Secretary to the Govt. of Assam, Finance Department wrote a D.O. letter on 14.7.95 to the Commission requesting the Commission to select the candidates to fill up 45 vacant posts. But the select list was published by the Commission for 19 candidates only in spite of the fact that the Finance Department asked for requisite number of candidates to fill up 45 vacancies. The said select list is claimed to be published on 12.9.95. The select list was published against 18 posts mentioned in the advertisement. After publication of the select list, on 25.9.95 Anr. letter was written by the Secretary requesting the Commission to send 20 more names of selected candidates for the said posts in view of the fact that many posts were lying vacant. Thereafter, names of the Anr. 6 persons were sent and it is the case of the Petitioners that those 6 candidates are from the waiting list. In fact no waiting list was at all published by the Commission. On the basis of the select list the 19 persons whose names were forwarded by the Commission were appointed and subsequently Anr. 6 persons whose names were sent also have been appointed against backlog of Schedule Caste and Scheduled Tribe candidate which was not at all mentioned in the advertisement which was published. Petitioner's further case was that the Petitioners are entitled to benefit under the Assam Finance Service Rules, 1963 specially the benefit of promotion under Rule 6(4) read with the proviso thereto.

4. On these backgrounds the writ application was filed with the following prayers:

In the premise aforesaid, your Petitioners prayed that your Lordships may be pleased to call for the records of the case, issue a Rule calling upon the Respondents as to why a writ of mandamus or a writ of like nature should not be issued directing the Respondents, more particularly, the Assam Public Service Commission to publish Anr. select list and/or a waiting list containing names of the selected out of 89 candidates who appeared in oral examination to fill up the remaining 20 posts of Treasury Officer/Deputy Director-Audit and Finance & Accounts Officer which are at present lying vacant in the Finance Department as would appear from the DO letters being No. FEB.228/92/250 dt. 14.7.95 and FEB.228/92/272 dt. 25.9.95 and further directing the Respondents to appoint the selected candidates in such waiting list against the remaining 20 vacancies in the Finance Deptt. as stated above for the interest of justice of public service and/or any other appropriate writ or direction should not be issued restraining the Respondents from taking any other alternative method or making fresh advertisement for filling up those 20 vacancies and on hearing the cause of

causes maybe please to pass any other order or orders as to your Lordships may deem fit and proper.

5. No affidavit-in-opposition was filed on behalf of the Assam Public Service Commission. An affidavit-in-opposition was failed and it is said to be on behalf of the Respondent Nos. 2 and 3. This is a mistake committed by the learned Govt. advocate as in fact it is an affidavit-in-opposition on behalf of Respondent Nos. 1 and 2 namely, the State of Assam and Commissioner & Secretary to the Govt. of Assam. This affidavit was sworn by the Deputy Secretary to the Govt. of Assam. In the affidavit-in-opposition in para 7 it has been stated as follows:

7) That in reply to the statements made in paragraph 6 and 7, it is submitted that although the Assam Public Service Commission (hereinafter referred to as A.P.S.C.) made advertisement for 36 candidates, 18 for Director recruitment and 18 for promotion quota, yet the A.P.S.C. selected only 2 candidates viz. Smti Bharati Bora and Shri Rajendra Kumar Das against promotion quota and sent the same to the Secretary, Finance to the Govt. of Assam vide-letter No. PSC/E/31/Con/92-93, dated Guwahati the 30th April/94.

Hence, the total vacancy position remained as $18 + 16 = 34$. However, the said vacancy position in the mean while raised upto 45 due to retirement or otherwise. It may be stated here that the vacancy position hardly remains static/in as much as this position may sometimes change due to degradation or reversion posts if and when situation arises. As per Rule 5(2) of the Assam Finance Service Rules, 1963 as amended since the remaining post of promotion quota can be filled up from the select list of Director recruitment and vice versa, the A.P.S.C. were informed about the position of increased vacancy vide this Deptt. D.O. No. FEB.228/92/250 dated 14.7.95 and requested the A.P.S.C. to send names to suitable candidates for appointment in the Assam Finance Service.

But inspite of the request the A.P.S.C. forwarded a select list of 19 candidates only vide letter No. 16 PSC/E-32/Con/92-93, dated Guwahati, the 12th September, 1995.

A copy of the aforesaid letter dated 30.4.94 recommending names of two candidates against Departmental (Promotion) quota by the A.P.S.C. for appointment in Class-I, Grade-III cadre of Assam Finance Service, a copy of the letter dated 14.7.95 informing the A.P.S.C. about vacancy position in the Finance Deptt. and requesting to send names of suitable candidates for appointing them in the said service, an except of the aforesaid Assam Finance Service Rules, 1963 for made of recruitment and a copy of the aforesaid select list forwarded by A.P.S.C. on 12.9.95 are annexed hereto and marked as Annexure A, B, C and D respectively.

6. Before we proceed further we must state herein that it is a really strange situation and strange course of conduct adopted by the Assam Public Service Commission. 18 posts were advertised by way of direct recruit. Promotion quota is to be filled up according to Rule 6(4) of the Assam Finance Service Rules. So,

as a matter of fact, the Assam Public Service Commission had no jurisdiction to make any recommendation for promotion of the departmental candidates. It was beyond their jurisdiction. But in spite of the Commission made recommendation for 19 + 6 i.e., for 25 candidates out of the competitive examination held by it which appears to be illegal and without authority of law. Be that as it may there is power with the Government that if persons are not found to be fit for promotion by the Departmental Promotion Committee, the posts can be filled up by direct recruits and that is provided in Rule 6 of the Assam Finance Service Rules, 1963 which is quoted below:

5. Method of recruitment (1) Recruitment to the service shall be made:

(a) by promotion accordance with Rs. 6 and 7, and

(b) through competitive examination in accordance with Rule 9.

(2) When sufficient number of candidates are not available for filling up vacancies reserved for promoted or direct recruits they may be filled up by candidates of the other category. The reservation of 50 per cent quota for promoted or direct recruits shall not be carried forward.

But before going for direct recruits of promotional quota, the departmental promotion committee must make an exercise to find out whether such candidates are available or not. Only thereafter the exercise for direct recruit is to be made. There is nothing on record to show that this was done. In the absence of it the Commission should have kept itself confined to 18 posts which were available for direct recruits and which was advertised.

7. When this matter came up for hearing the learned Single Judge by judgment dated 30th July, 1997 found as follows:

Mr. Dutta further submitted that the Petitioners legitimately expected that if a waiting list of 45 candidates had been published by the Commission their names would have been included in such a waiting list and in that case they would have been entitled to be appointed in the posts advertised for against 45 vacancies as disclosed by the Finance Department in the said D.O. letter. According to Petitioners' calculation, against 45 vacancies Department has already appointed total 25(19+6) candidates as trainees for absorption in those posts and that there remained 20 posts more out of the 45 posts yet to be filled up in the Finance Department. Therefore, Petitioners prays for a direction from this Court to fill up those 20 posts by preparing waiting list from amongst the 89 candidates who were successful in the interview held on 22nd and 23rd October, 94.

This submission itself is not tenable in law in as much as once the advertised vacancies are filled up, the Commission has no business to forward more names.

8. Mr. P. Prasad (since deceased) who was the counsel for the A.P.S.C. candidly submitted before the learned Single Judge by producing the record as follows:

...From the records it is revealed that as per the direct recruit 89 candidates

were called for interview and 18 nos. of candidates were selected, but no select list in order of merit has been made so far.

In page 92 the learned Single Judge came to the following finding:

...I hold that the Commission has included in their selection those 45 posts apart from 18 advertised posts. The admitted position is that there is no select list of 89 candidates after the interview and, therefore, no waiting list was made, though attempt was made to show that appointed candidates apart from the selected 19 candidates were from waiting list. In the affidavit Respondent is trying to show that those candidates are from reserved quota and they have been brought in and accommodated after revalidating the earlier select list exclusively meant for SC/ST reserved quota.

In page 93 it was found as follows:

... I hold Petitioners are not below average candidates. Further, the averments made in the affidavit regarding appointments by revalidating the earlier select list exclusive meant for the reserved candidates cannot be accepted as apparently of separate examination was held by the APSC for recruitment exclusively meant for SC/ST candidates and on the basis of that a select list was prepared.

In page 95 it was further held:

... Mr. P. Prasad, counsel for the APSC submitted that no select list has been found in the record and this Court also after elaborate effort did not find out the same.

Accordingly in para 15 of the judgment following direction was given:

15. In view of the above situation, the Respondents Commission shall publish a list of remaining 20 candidates remained to be filled up during the relevant period to enable the Govt. to fill up those posts, as the work of the Finance Department is under acute shortage of officers which apparently affects the public interest. While the list will be prepared, Commission shall consider the case of the 9 writ Petitioners keeping in view their experience and the required training they have already undergone.

9. It maybe stated herein that Anr. Civil Rule was filed being W.P.(C) No. 3890 of 1997 by eleven persons in which the following order was passed:

5.12.97

The facts and the law in the writ petition is squarely covered by the decisions of this Court in Civil Rule No. 5055/95. Accordingly the Petitioner would be entitled for the similar benefit of the judgment and order passed by this Court on 30.7.97 in Civil Rule No. 5055/95. The Respondent- Commissioner shall accordingly consider the case of the Petitioners also in the light of the direction given by this Court in its decision dated 30.7.97 passed in Civil Rule No. 5055 of 1997. This

order is passed upon hearing Sri N. Dutta, learned Counsel for the Petitioner assisted by Sri S.K. Medhi advocate and K.H. Choudhury, the learned addl. senior government advocate and Sri B.J. Talukdar, advocate for the A.P.S.C.

10. Thereafter on 11.12.97 a review application was filed being Review Application No. 7 of 1998 by the Chairman, Assam Public Service Commission and the affidavit in respect of this review application was sworn by one Sri Balindra Hazarika, Assistant Collector of Examination, A.P.S.C. Para 2 to 5 of the review application are quoted below:

2. That the said writ application had been preferred by one Shri Abani Kumar Goswami and twelve Ors. jointly. The Petitioners contended that they have been serving in different posts in the Finance Department of the Govt. of Assam since about 5 years following an advertisement dated 17.7.93 by the A.P.S.C. for 18 posts of Finance and Accounts Officer/Treasury Officer/Deputy Director-Audit and Class I Grade-III cadre of Assam Finance Service they all applied A.P.S.C. held written examination on 22nd and 23rd October, 1994 in which 1188 candidates took part, out of which only 88 candidates qualified for interview. Five candidates absented themselves from interview and remaining 84 were interview with the help of expert deputed by Government. On 6th, 7th, 10th, 11th, 12th and 13th July, 1995. For the 18 advertised posts the Commission selected and recommended the names of 19 candidates in order of preference vide letter dt. 12th September, 1995, vide Anr. letter dated 25th October, 1995 the Commission recommended the names of six more candidates in order of preference. Meanwhile the Commission held provisional examination for a number of said posts in which 4 candidates appeared out of which only two were selected on merit and their names were forwarded vide letter dt. 30.4.94.

3. That before publication of the select list vide letter dt. 14.7.95 requested the APSC to select candidates to fill up 45 vacancies. The Commission could not recommended 45 candidates because of their performance in the interview was not upto the mark. The A.P.S.C. selected and recommended names of only 19 candidates for the 18 advertised posts and opined that the rest of the candidates who had appeared in the interview are not up to the mark and after proper advertisement selection of better candidates should be made. The writ Petitioner contended that a waiting list should have been prepared and they should have been absorbed in the additional vacancies.

4. That the Hon''ble Court accepting the contention of the Petitioner by judgment and order dt. 30.7.97 directed the A.P.S.C. to publish a list of remaining candidates to enable the Government to fill up all the vacancies.

5. That the humble Petitioner most respectfully state that the aforesaid direction of the Hon''ble High Court to publish the list of candidates for remaining vacancies would tantamount to publish select list without advertising the vacancies would amount to denial of right to candidates who are eligible to apply after the earlier advertisement for 18 candidates and therefore would be violative

of Article 14 of the Constitution and would be against the settled law laid down by the Apex Court.

11. An additional affidavit was filed by the then Chairman of the Commission in respect of the review application. The stand taken in the additional affidavit by the Chairman is as follows:

(a) ...It is true that the Commission could not provide required assistance to his Hon"ble Court as it has failed to produce relevant records regarding the performance of the writ Petitioners in the examination as there was a communication gap between the learned Counsel of the Commission and the office of the Assam Public Service Commission. The Court in fact passed the impugned judgment on the basis of whatever records produce by the learned Counsel, Assam Public Service Commission. The deponent believes that had the relevant records been produced before the Court at the time of hearing, the Court might not have passed the impugned judgment directing the Commission to publish the list for remaining 20 vacancies.

(b)...The Commission on 12.9.95 initially recommended the names of 19 candidates on the basis of there performance in the examination. On receipt of further request from Govt. on 25.10.98 the Commission recommended the names of all the candidates who secured at least the cut off marks in their respective categories for appointment. It may be mentioned that even after this flexible approach, the Commission could recommend the names of only 6 candidates as none of the remaining candidates had scored the minimum cut off as mentioned above.

(c) ... This Court was pleased to hold that the Petitioners are not below average as they have come out successfully in written examination and were allowed to appear in the interview/oral examination. However, the aforesaid contention of the Petitioners were not true and the records will reveal that their performance in the entire interview was below average.

12. On the basis of this review application on 29th September, 1999, this Court gave the following direction:

7. In that view of the matter, the judgment and order dated 30.7.97 is modified to the extent, that, as per Government requisition and request/proposal, the Assam Public Service Commission shall select and recommend the candidates from the same select list subject to their performance in the interview in the same selection process so that those vacant posts can be filled up immediately.

13. Being aggrieved by this order, Writ Appeal No. 523/99 has been filed by the Commission and Writ Appeal No. 400/99 has been filed by the writ Petitioners.

14. We have heard Mr. K.N. Choudhury learned senior counsel, assisted by Mr. T.C. Chutia, learned Counsel for the Assam Public Service Commission and Mr. A.K. Bhattacharyya, learned senior counsel assisted by Mr. B.K. Singh, learned Counsel for the writ Petitioners Appellants. We have also heard Mr. s A. Hazarika,

learned Counsel for the State of Assam.

15. Before we go to the other aspects of the matter, let us have a look at the provisions of law with regard to the competitive examination and how the posts are to be filled up by the Assam Public Service Commission. This matters covered by the Assam Public Service Commission (Limitation of Functions) Regulations, 1951. Part-II provides for recruitment by open competition and Rule 4(a) and (b) are quoted below:

4. In the case of recruitment by competitive examination the Commission will send to the appointing authority a complete list of the marks obtained by each of the candidates, and:

(a) if the appointing authority is the Government, the Secretary in the Department concerned shall submit without comment for the order of Government, the names of, or

(b) if the appointing authority is not Government, that authority shall appoint the candidates who obtain the highest marks upto the number of vacancies to be filled, or, where recruitment is to be made from candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes, the candidates of each category who obtained the highest marks upto the number of vacancies to be filled from that category, provided that the Commission certifies that these candidates are fit for appointment.

16. There is a set of rules known is Assam Public Service Commission (Procedure and Conduct of Business Rules, 1986. Rule 41, 42 43 and 48 are quoted below.-

41. When on each day after the interview is over and marks are awarded to each candidate the mark-sheet prepared shall be placed in sealed covers and will be kept by the Chairman.

42. The mark-sheets so obtained shall be opened on the last day of the interview or immediately thereafter and the marks of interview/personality test in a competitive examination shall be added to the marks obtained by the candidate in the written examination. Thereafter on the basis of totals so obtained the merit list shall be prepared and placed before the Commission for final declaration of the result:

Provided that the Commission may with a view to eliminate variation in the marks awarded to candidate on any examination or interview adopt method, device or formula which they consider proper for the purpose.

43. After the results are declared by the Commission, a copy of the same shall be placed in the Notice Board. A copy of the result will also be sent to the Press/ Newspapers with a request to publish the same.

48. Where multiple Boards are constituted by the envelopes containing the original mark-sheets of interview held by different Boards shall be sent to the Chairman/Senior most member for preparation of results which shall be sent to

all members of the Board for signature. The Private Secretary to the Chairman shall prepare the results.

17. No mark-sheets were sent and even it was not produced before this Court, though sufficient opportunity was given or it. Another aspect of the matter which must be borne in mind is that we are exercising the powers of judicial review and in exercising the powers of judicial review when we question the propriety/legality of a decision of Anr. constitutional body we must adopt a cautious and prudent approach. We are not sitting on appeal over the decision of Anr. constitutional body. But in exercise of judicial review we must find out whether there is transparency and adherence to the Rules or whether the decision making process is fair and transparent one. We are not concerned with the decision. The founding fathers of our Constitution have given that power or role to Anr. body. But if it is found that the decision making process itself is not valid and proper by adhering to Rules or it does not inspire confidence of the people in the system, writ Court must step in to stop such a rot. If it is found that the Commission did not adhere to the Rules for its guidance and in arriving at the decision, the action of the Commission shall have to be termed as arbitrary. The Rules are made to be adhere to so that the public cannot question the honesty, fairness, transparency and the role of the Commission. Some Rules are mandatory and some may be directory.

18. The founding fathers of the Indian Constitution rejected the "spoils system", under which the administration is carried on by civil servants appointed in consideration of their political service to the party in power. They realized that the democratic system could be maintained only if the civil servants are appointed solely on the basis of merit by open competition and only if they could carry on the administration independently, instead of blindly carrying out the orders of their political superiors. It is for this that Commission is constituted as a constitutional body. See Constitution by Basu, 1999 Edition).

19. For the recruitment on the basis of merit, they provided for a Public Service Commission at the Union as well as at the State level, which itself should be an autonomous body; so that it could carry on its functions independently, fairly and impartially, it should be constituted with men of high integrity and qualification.

20. If any authority is required, one can go through Lila Dhar Vs. State of Rajasthan and Others, where the Supreme Court in para 4 pointed out as follows:

4. The object of any process of selection for entry into a public service is to secure the best and the most suitable persons for the job avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively is the essential foundation of any useful and efficient public service. So, open competitive examination has come-to be accepted almost universally as the gateway to public services. "The ideal in recruitment is to do away with unfairness." United Nations Handbook on Civil Service Laws and Practice". Competitive examinations were the answer to the twin problems represented by

democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency.... By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved. Public personnel Administration by O. Glen Sthal. "Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull" everyone stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence." Introduction to the study of Public Administration by Leonard White.

21. It is in this background that we must decide this case Mr. Chowdhury, learned advocate for the Assam Public Service Commission in Writ Appeal No. 523/99 makes the submission that as there is no wait listed candidate, the Commission cannot adhere to the directions given by this Court and, further with regard to the request of the Government to concerned suitable candidates, there was no suitable candidate as their performance was below the cut-off mark. In support of his contention Mr. Chowdhury placed reliance on the following decisions:

State of Bihar and Anr. v. Madan Mohan Singh and Ors. reported in 1994 (3) SCC 308. That was a case where an advertisement was made to fill up 32 vacancies. Recommendation was made and 32 vacancies were filled up and the Supreme Court pointed out that as the 32 vacancies were filled-up, there cannot be any further appointment from that select list as the list itself has been exhausted and the selection process has ended. It was further pointed out that the same list has to be kept alive for the purpose of filling up of other vacancies, would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and the selection process.

22. The next case relied upon by Mr. Chowdhury is Ashok Kumar and Ors.-v Chairman, Banking Service Recruitment, Board and Ors. reported in (1996) 1 SC 283 wherein the Supreme Court pointed out that Article 14 read with Article 16(1) of the Constitution enshrines fundamental right of every citizen to claim consideration for appointment to a post under the State. Therefore vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for the selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the Constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, appointing the persons from the waiting list; prepared by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, unconstitutional. However, since the appointments have already been made and none was impeached the Supreme Court did not interfere with these matters adversely affecting the appointments.

23. The next case relied upon by Pradip Gogoi and Others Vs. State of Assam and Others, This is a case of this Court and Division bench of this Court laid down the law that no candidate in the waiting list shall acquire a right to get appointment. As against that a SLP was filed before the Apex Court and that was dismissed by the Apex Court holding as follows:

2. Though Mr. Goswamy, learned Counsel appearing for the Petitioners is right in contending that opportunity should be given to such people and the Petitioners too would have had also applied for appointment having considered their cases awaiting for such an appointment since their case were tested by the Public Service Commission and kept in the waiting list, omission to appoint them affects their rights seriously under Article (1) of the Constitution. We cannot give a direction to consider their cases for appointment from the wait list. The sympathetic vibrations are also responsible for this sagging problem and moral degeneration. Under these circumstances, we are constrained not to accede to the persuasive request made by Mr. Goswamy. However, the authorities are directed to notify forthwith vacancies to the Public Service Commission and the Public Service Commission would take necessary expeditious action for recruitment and recommend the names to the authorities expeditiously, so that the existing vacancies would be filled up and the Petitioners and all eligible candidates would also be eligible to apply.

24. Another case relied upon by Mr. Chowdhury is Madan Lal and Ors. v. State of J & K and Ors. reported in (1995) SCC 486. That decision is also on the same point that once notified vacancies are filled-up, there can be no further appointment from the select list even if vacancies arise subsequently.

25. On the basis of these decisions of the Apex Court which are binding on us, we accept the propositions of law as put forward by Mr. Chowdhury. But the matter does not end there. There are certain other murky facts as revealed from the records and we want to have a bird's eye view on these matters not to condemn the conduct of the Commission but to strike a note of caution with hope and trust that the Commission may be more cautious and prudent in future. We are not touching the appointments already made, as they are not parties before us and further almost 4 years have elapsed from the date of appointment.

26. Mr. A.K. Bhattacharyya, learned advocate for the Appellants in Writ Appeal No. 400/99 strenuously contends that on earlier occasion record was produced before this Court and this Court on examination of the record found that there was no select list. Even that was the finding of the learned Single Judge, thereafter a review application was filed wherein it was stated that there is a select list. The record which now has been produced before this Court by the learned Counsel for the A.P.S.C does not show any selection proceeding. The selection proceeding and the mark sheets should be maintained by the A.P.S.C. according to its own rules and not only that when the Commission sends recommendation to the Government they must reflect the marks obtained by each candidate. That is a mandate of rule which we have quoted above. The

Commission cannot recommend and send a list to the Government without mark sheets. That is what has been done here. A bare perusal of the records will show that the list was published on 12.9.95 for 19 candidates and the matter was closed thereafter as evident from the note sheet. How thereafter the matter was reopened with regard to that there is no note sheet. The next note is dated 27.2.96 which shows the names of 25 candidates appointed. There is also no record to show that there was selection for these 25 candidates by adhering to Rules. Further there is Anr. disturbing factor. The result was published on 12.9.95 by the Assistant Controller of Examination. In pursuance of the rules it was never notified, it was not sent to the press or to newspapers which is required under the law. On the same date the Chairman of the Assam Public Service Commission on his own wrote a letter to the Government for appointment of 19 persons (though only 18 posts were advertised) and though the vacancy position was 18 the Government appointed 19 candidates and thereafter names of Anr. 6 persons were sent on 25th October, 1995. Selection cannot be made by instalments. There must be one combined select list. Publication of result must be once for the advertised posts. No waiting list is available in the record produced before us and it is not known wherefrom these 6 persons have been picked up. Further in the result published by the Assistant Controller of Examination appearing at page 93 for 6 candidates the date is cut both at the top as well as below signature and that was shown to the learned Counsel for the parties. Earlier to this publication itself the then Chairman of the Commission sent a letter to the Government recommending 6 persons. The names were recommended by the Chairman on 21.10.95 but the result as seen from the record was published on 25.10.95 for these 6 persons. That is something unthinkable. Not only that we have shown the records to the learned Counsel for both the parties and we have doubt regarding select list dtd. 12.9.95. Of course, there is no material before us to establish that these pages were inserted later on after the decision of the learned Single Judge. There is doubt regarding the whole selection process, in the absence of selection proceeding or mark sheet. Further, the note sheets maintained are like a mirror to a file maintained. The note sheets are absolutely silent with regard to different stages.

27. We close the chapter here with the hope that things will improve and there will not be any complaint to the effect that "something is wrong in the State of Denmark". It may be stated herein that in the regulation which we have quoted above there is no provision for wait list and that is why the provision for some few more names to be added and it is really unfortunate that candidates are wait listed and somebody take advantage of it.

28. We dispose of the Writ Appeals as follows:

1) Writ Appeal No. 523/99 shall stand disposed of with a direction that there is no need for the Commission to make recommendation as directed by the learned Single Judge in the review application.

2) Writ Appeal No. 400/99 shall stand disposed of with a direction that if the

Petitioners are entitled to the benefit of Rule 6(4) and the proviso thereto of the Assam Finance Service Rules, 1963, that benefit shall be given to them as it will be really unjust and improper to deny the benefits to these persons if they really deserve promotion at the hands of the authority.

29. As we have found the whole selection process to be not fair and proper, we have all sympathy for these candidates. But in view of our circumscribed power we cannot give any direction for re-consideration of their cases. But they should receive justice in the hands of the authority. The authority should try to wipe out injustice if any caused to them. Even making a bold attempt to wipe out genuine tears of somebody to justice. We also hope that the authority shall look to the aspect that 50% of the posts are available by way of promotion and that shall be strictly adhered to according the rules.

30. Before we part with the record we make it explicitly clear that the excessive we have made about the affairs of the Commission is not to erode the confidence of the public in the august body but only to point out the loopholes so that it may be plugged in future. It is with anguish and pain that we have delved into it. We quote here a famous line of Churchill "It is wrong not to learn the lessons of the past before the future." To keep some thing below the carpet is not beneficial for the institution, rather it should be the endeavour to remove the garbage. Though the selection made by the Commission is only recommendation and not binding on the Government, yet it must be an unbiased advice as it affects the moral of public service. Public Service Commission is an independent constitutional body. So it is entrusted a valuable and far reaching important task of selecting personnel to whom shall be entrusted the duty of running the administration of the State. Destiny of the people very much depends on the fair and just decision of the Commissioners. Way back in 1954 the Supreme Court pointed out that the Executive is to be manned by the cream of the society. The Commission must chum/separate this cream from the milk.

The records are returned to the learned Counsel for the A.P.S.C.